

***United States Court of Appeals  
for the Second Circuit***



**APPELLANT'S  
APPENDIX**





74-1517

B  
PAS

In The  
United States Court of Appeals  
For The Second District

\_\_\_\_\_\*\_\_\_\_\_  
Docket No. 741-1517

UNITED STATES OF AMERICA,

Appellee,

- against -

SALVATORE THOMAS BADALAMENTE  
and HERBERT YAGID,

Appellants.

On Appeal from the United States District Court  
for the Southern District of New York

APPENDIX OF APPELLANT BADALAMENTE

\_\_\_\_\_  
MICHAEL P. DIRENZO  
Attorney for Appellant  
15 Columbus Circle  
New York, New York 10023  
(212) 541-7740

ALFRED LAWRENCE TOOMBS  
of Counsel  
355 Broadway  
New York, New York 10013  
(212) 431-3460

\_\_\_\_\_  
LEGALLY YOURS O.S. ENTERPRISES, LTD.  
507 Fifth Avenue, Suite 605  
New York, New York 10017  
(212) 697-5675

PAGINATION AS IN ORIGINAL COPY



## TABLE OF CONTENTS

### Appendix

	Page
Docket Entries.....	1a
Indictment (Filed May 21, 1973).....	6a
Excerpt From Testimony of Herbert Olsberg-Direct Examination (Re: March 23 Meeting).....	10a
Excerpt From Testimony of Herbert Olsberg-Cross Examination (Re: Badalamente).....	14a
Court's Charge.....	58a

CRIMINAL DOCKET  
UNITED STATES DISTRICT COURT

JUDGE CARTER

D. C. Form No. 100 Rev.

73 CRIM 4571

TITLE OF CASE

THE UNITED STATES

vs.

For U. S.: 204-2938

Special A. U. S. Atty.

Michael C. Bernhardt

1) JERRY ALLEN

2) SALVATORE THOMAS BADAIALENTE

3) ARTHUR DEPADELLI

4) JAMES FARMY

2-8-74

5) LOUIS STEIN, a/k/a Louis Rush

6) EDWARD TURI

7) HERBERT YAGID

For Defendant:

(05) STATISTICAL RECORD

COSTS

DATE

NAME OR  
RECEIPT NO.

FEC.

DISB.

J.S. 2 mailed

Clerk

J.S. 3 mailed -4-

Marshal

Violation

Docket fee

Title 18

Sec. 2385, 2 transportation

Interstate Commerce

counterfeited securities

(ct. 2)

371 conspiracy so to

do (ct. 1) --- THE COURTS---

DATE

PROCEEDINGS

5-21-73

filed indictment.

JERRY ALLEN - SALVATORE T. BADAIALENTE and HERBERT YAGID - B/W's ordered. --

B/W's issued for above 3 defendants.

Cannella, J.

6-1-73

JERRY ALLEN - Left. present - bail fixed at \$15,000. P.R.B. - Left. ordered a photostamped and fingerprinted. Hearing adj. to June 11, 1973. -

Cannella, J.

1-73

Allen-Filed P.R.B. in the sum of \$15,000. dtd. 5/1/73.

-11-73

J. Allen- Filed affdvt. and notice of motion for an order extending defendants bail limits to include the Continent of Europe, Canada and the State of Florida. -- ret. 6-11-73 in Ch 100

-11-73

J. Allen- Filed memo endorsed on above Motion: "Application granted on U.S. Atty's request. Submit order on consent." -- Palsano, J.



## JUDGE CARTER

DATE	PROCEEDINGS
6-13-73	LOUIS STERN and HERBERT YAGID-Filed affidavit & notice of motion for-Discovery & inspection Bill of Particulars etc.-Ret. 6-22-73.
6-11-73	ALLEN, BADALAMENTE, BERARDELLI, STERN, TURI and YAGID(atty present) plead not guilty. Bail cont'd. FEENEY (atty present) plead not guilty. Fingerprinted & Photographed. R.O.R. \$10,000. P.R.B.---Palmieri, J.
6-15-73	JAMES FEENEY-Filed order-Bail limits are extended to allow deft. to travel through the U.S., Canada and Europe etc.--Carter, J.
6-18-73	SALVATORE, THOMAS, BADALAMENTE AND LEONARD-Filed affidavit & notice of motion for Discovery and inspection Bill of Particulars etc. Ret. 6-22-73.
6-13-73	SALVATORE THOMAS BADALAMENTE-Filed Warrant for Arrest with Marshal's return-District of N.J.-Deft. arrested 5-22-73-Released same day \$10,000. PRB.
6-13-73	HERBERT YAGID-Filed Warrant for Arrest with Marshal's return-Arrested by FBI Agent. Released \$10,000. PRB.
6-11-73	JAMES FEENEY-Filed PRB without security in the sum of \$10,000.
6-19-73	JAMES FEENEY-Filed notice of appearance of Marvin B. Segal 375 Ave. N.Y.C. Pl 3-7800
6-19-73	JERRY ALLEN-Filed notice of appearance of Feldshuh & Frank, 144 E. 44th St. N.Y.C.
6-19-73	LEONARD TURI & SALVATORE BADALAMENTE-Filed notice of appearance of Salvatore Nigr. 233 B'way N.Y.C. Wo 4-8883
6-19-73	LOUIS STERN & HERBERT YAGID-Filed notice of appearance of Paul P. Nao, 233 B'way N.Y.C. WO 4-8866
6-21-73	Filed Government's notice of readiness for trial.
6-21-73	Jerry Allen- Filed order extending defendants bail limits to include the Continent of Europe, the country of Canada and the State of Florida, during the pendency of his prosecution. The deft. to give notice to the U.S. Atty. prior to his departure from the S.D. of N.Y. and within 48 hours of his return thereto. Carter, J.
7-10-73	Herbert Yagid-Filed affidavit and notice of motion for an order permitting the deft. to extend his bail limits to the Continental U.S.
7-10-73	Herbert Yagid-Filed order on deft's motion to extend bail limits. "B" bail limits extended to the Continental U.S. consented by Govt. (mailed notice) Carter, J.
7-16-73	FEENEY- Filed affidavit and notice of motion (a) inspection of grand jury minutes (b) a bill of particulars (c) to inspect and photograph certain documents. FEENEY- Filed defts. memorandum of law in support of above motion.
7-24-73	BADALAMENTE- Filed defts. affidavit and notice of motion for an order extending deft's bail limits. - ret. 7-24-73
7-24-73	BADALAMENTE- Filed order extending defts. bail limits to incl. the continental U.S.

DATE	PROCEEDINGS
7-26-73	All defts'- Filed Governments affdvt. in opposition to motions for discovery & inspection, bill of particulars, disclosure of Grand Jury minutes and dismissal.
7-26-73	All defts'- Filed Governments affdvt. in opposition to defts pre-trial motions.
7-31-73	Jerry Allen- Filed order further extending defts. bail limits to include all of the continental USA
8-6-73	ALL DEFENDANTS - Filed Govts notice of motion for reargument of Court's decision to inspect.
8-20-73	Filed Govts affdvt & notice of motion for rehearing.
8-20-73	Filed Govts memorandum of law.
9-6-73	Filed Govts. Bill of Particulars w/requests of Defts. Turi and Badalamente.
9-11-73	ALL DEFENDANTS- Filed Governments supplemental bill of particulars.
9-12-73	Hearing held - trial date set for Jan. 2, 1974 -- Carter, J.
9-26-73	All defendants- Filed Governments notice of motion for a re-hearing re disclosure
9-28-73	All defendants- Filed Governments affdvt. in support of above motion for a re-hearing.
9-28-73	All defendants- Filed Governments memorandum in support of Governments application to re-consider.
Nov. 7-73	LINDER-- Filed govts. bill of particulars.
Nov. 12-73	TURI-- (atry. present)--deft. withdraws his plea of not guilty and pleads GUILTY to Count 1 only. PSI ordered. Sentence adj. to Jan. 15, 1974 at 9:30am. Bail contd. \$10,000. PRB Carter, J.
11-26-73	Filed transcript of record of proceedings, dated <i>Sept 12, 1973</i>
Jan- 2-74	JAMES FEENEY- Filed notice of appearance by Landas Rosen & Miller, Esqs. 110 E. 59th Street, NYC 10022 (Michael Miller of counsel) 832-C500
1-10-74	Filed transcript of record of proceedings, dated <i>1-12-73</i>
Jan. 30-74	Filed for Govt. Motion to adjourn trial date.
Feb. 15-74	Filed for Deft. BADALAMENTE - Order -- Ordered that the records of Herbert Glas be produced in U.S.D.C. for S.D.N.Y. and it is further ordered that such be produced prior to the trial of the above matter - Carter, J. (m/n)
Mar. 8-74	JAMES FEENEY - Leave to file the within Nolle Prosequi is granted - Carter, J.
Feb. 28-74	ARTHUR BERARDELLI (atty present) withdraws his plea of Not Guilty and PLEADS GUILTY to count 1 only. Pre-sentence report ordered. Sentence adj. to April 9-1974 at 9:30 A.M. in Room 519. Bail continued \$10,000 P.R.E.C.



- Mar. 4-74 JERRY ALLEN (atty present) withdraws his plea of Not Guilty and PLEADS GUILTY to only. Pre-Sentence report ordered. Sentence adjourned without date. Bail con \$15,000 P.R.B. - Carter, J.
- Mar. 4-74 Jury Trial began as to defts. SALVATORE THOMAS BADALAMANTE, LOUIS STERN AND HERBERT YAGID (attys. present) Governments motion to dismiss count 2 as to deft. BADALAMANTE
- Mar. 5-74 Trial continued
- Mar. 6-74 Trial continued Government rests
- Mar. 7-74 Trial continued Deft. Badalamante Rests- Deft's Stern & Yagid Rests.
- Mar. 8-74 Trial concluded - Jury Verdict as to Deft. BADALAMANTE GUILTY ON COUNT 1 STERN GUILTY ON COUNTS 1 & 2 YAGID GUILTY ON COUNTS 1 & 2 P.S.R. ordered. Sentence adjourned to April 11, at 2:30 A.M. in room 519. Bail continued as to all defts. - CARTER, J.
- 3-12-74 Filed Government's proposed Examination of Prospective Jurors.  
Filed Judgment(atty. present)
- 4-11-74 HERBERT YAGID - It is adjudged that the defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of TWO (2) YEARS, on count 1 and TWO (2) YEARS To run consecutively on count 2. Bail Pending Appeal is granted and fixed in the amount of \$10,000 Personal Recognizance Bond unsecured. Bail limits are to cover the states of New York and New Jersey (copies issued)
- 4-11-74 LOUIS STERN - Filed JUDGMENT(atty present) It is adjudged that the defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of FIVE(5) YEARS, execution of sentence is suspended and defendant is placed On probation for a period of FIVE(5) YEARS, subject to the attending probation order of this Court, pursuant to Title 18, United States Code Section 3601. Special condition of probation being that the defendant reside at a Community Treatment Center. - CARTER, J. (copies issued)
- 4-11-74 SALVATORE THOMAS BADALAMANTE - It is adjudged that the defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of ONE(1) YEAR. Bail Pending Appeal is granted and fixed in the amount of \$10,000 Personal Recognizance Bond unsecured. Bail limits are to cover the states of New York and New Jersey - CARTER, J. (copies issued)
- Apr-11-74 SALVATORE THOMAS BADALAMANTE- Filed defendants notice of appeal to the USCA for the 2nd Circuit from final judgment entered on 4-11-74 -- mailed copies to US Atty. and deft. address 244 Mc Elroy Ave., Fort Lee, N.J.
- 4-16-74 ARTHUR BERADELINI - Filed JUDGMENT(atty. present) It is adjudged that the defendant is hereby placed on probation for a period of TWO YEARS, subject to the attending probation order of this Court. Probation to begin following sentence imposed by Judge Kolley. On defendant's counsel's motion count 2 is dismissed with the consent of the Government. - CARTER, J. (copies issued)



## DOCKET ENTRIES

5 a

73 Cr. 471

CARTER, J.

DATE	PROCEEDINGS
4-16-74	LEONARD TURI - FILED JUDGMENT (atty. present) It is adjudged that the defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of TWO(2) YEARS Execution of sentence is suspended, and the defendant is placed on probation for a period of TWO(2) YEARS, subject to the standing probation order of the Court. On defendant's counsel's motion count 2 is dismissed with the consent of the Government. CARTER, J. (copies issued)
4-16-74	BERADELLI & TURI - Confidential & Sealed Envelope not to be opened except on order of the undersigned - So ordered - CARTER, J.
4-18-74	HERBERT YAGID - Filed Notice of Appeal to U.S.C.A. from the judgments of conviction dtd 4/11/74 (m/n)
4-23-74	HERBERT YAGID - Filed Notice of Motion and Order and Affidavits, returnable 4/24/74 at 12:30 P.M. Rm. 506, for an order granting permission for atty. of record to withdraw from the case relative to the transmission of the record on appeal and ordering the assigning of this matter to the Appeals Division of Legal Aid.
4-24-74	HERBERT YAGID - Filed ORDER re: Notice of Motion dtd 4/23/74 - Ordered that atty. of record Paul P. Rao, Jr. is hereby permitted to withdraw from the processing of the appeal, and it further ordered - that the deft. case be assigned to the Appeals Division of Legal Aid subject to their approval. PIERCE, J. (m/n)
4-30-74	Filed Letter from USDC for the Dist. of N.J. dated Feb. 1. 74 to the Clerk of SD of NY. enclosed with Magistrate J.D. Schwitzer paper Re: Herbert Yagid.
4-30-74	Filed transcript of proceedings dated MAR 4, 5, 6, 7, 8, 1974
4-30-74	Filed transcript of proceedings dated APR 10, 1974 4:20 P.M.
4-30-74	Filed transcript of proceedings dated APR. 11, 1974 9:30 A.M.
	<p>A TRUE COPY  RAYMOND F. BURGHARDT, Clerk  <i>[Signature]</i>  Deputy Clerk</p>

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

73 Cr. 471

-----x  
UNITED STATES OF AMERICA :

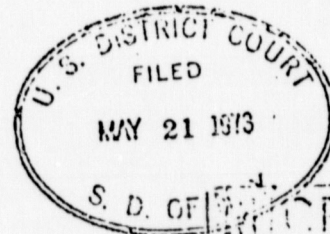
- v - :

JERRY ALLEN, SALVATORE THOMAS :  
BADALAMANTE, ARTHUR BERARDELLI :  
JAMES FEENEY, LOUIS STERN a/k/a :  
LOUIS RUSH, LEONARD TURI and :  
HERBERT YAGID, :

Defendants :

INDICTMENT

73 Cr.



-----x  
COUNT ONE

The Grand Jury charges:

1. From on or about January 1, 1973, up to and including the date of the filing of this indictment, in the Southern District of New York and elsewhere, JERRY ALLEN, SALVATORE THOMAS BADALAMANTE, ARTHUR BERARDELLI, JAMES FEENEY, LOUIS STERN a/k/a LOUIS RUSH, LEONARD TURI and HERBERT YAGID, the defendants, [unlawfully, wilfully and knowingly did combine, conspire, confederate and agree together and with each other and with other persons to the Grand Jury known and unknown to commit certain offenses against the United States,] to wit, [to violate Title 18, United States Code, Section 2314.

2. [It was part of said conspiracy that the defendants, with fraudulent intent, would] unlawfully, wilfully, and knowingly transport and cause to be transported in interstate and foreign commerce, falsely made, forged, altered and counterfeited securities, to wit, passbooks and certificates of deposit from Bank of America, Los Angeles, California, from Home Savings and Loan Association in Los Angeles, California and from American Savings Association in Dallas, Texas, knowing the same to have been falsely made, forged, altered and counterfeited.



3. Among the means whereby said defendants agreed to carry out the conspiracy were the following:

(a) The defendants JERRY ALLEN, ARTHUR BERARDELLI, JAMES FEENEY, LOUIS STERN a/k/a LOUIS RUSH and HERBERT YAGID would make arrangements to secure a falsely made, forged, altered and counterfeited passbook of either Home Savings and Loan Association, Los Angeles, California or Bank of America, Los Angeles, California for use thereafter as collateral for a loan from a Swiss bank.

(b) The defendant HERBERT YAGID would travel from New York, New York to Los Angeles, California for the purpose of securing a falsely made, forged, altered and counterfeited passbook of either Home Savings and Loan Association, Los Angeles, California or Bank of America, Los Angeles, California.

(c) The defendants JERRY ALLEN, ARTHUR BERARDELLI, JAMES FEENEY, LOUIS STERN a/k/a LOUIS RUSH, LEONARD TURI and HERBERT YAGID would make arrangements to secure a falsely made, forged, altered and counterfeited passbook of American Savings Association, Dallas, Texas for use thereafter as collateral for a loan from a Swiss bank.

(d) The defendant HERBERT YAGID would travel from New York, New York to Chicago, Illinois to secure a falsely made, forged, altered and counterfeited passbook of American Savings Association, Dallas, Texas.

(e) The defendant LEONARD TURI would travel from Chicago, Illinois to Newark, New Jersey to deliver a falsely made, forged, altered and counterfeited passbook of American Savings Association, Dallas, Texas.

(f) The defendants JERRY ALLEN, SALVATORE THOMAS BADALAMANTE, ARTHUR BERARDELLI, JAMES FEENEY, LOUIS STERN a/k/a LOUIS RUSH, LEONARD TURI and HERBERT YAGID would arrange to share in the illegal proceeds obtained through the loan to be secured by the falsely made, forged, altered and counterfeited passbook.

Indictment  
OVERT ACTS

8a

In furtherance of the conspiracy and to effect the objects thereof, the defendants, in the Southern District of New York and elsewhere, committed and caused to be committed the following overt acts, among others:

1. On or about March 20, 1973, the defendant HERBERT YAGID attended a meeting at Apartment 23-G, 300 East 74th Street, New York, New York.
2. On or about March 20, 1973, the defendants ARTHUR BERARDELLI, LOUIS STERN a/k/a LOUIS RUSH and HERBERT YAGID attended a meeting at the Luxor Baths Hotel, 121 West 46th Street, New York, New York.
3. On or about March 21, 1973, the defendants JERRY ALLEN, LOUIS STERN a/k/a LOUIS RUSH and HERBERT YAGID attended a meeting at the Luxor Baths Hotel, 121 West 46th Street, New York, New York.
4. On or about March 22, 1973, the defendants ARTHUR BERARDELLI, LEONARD TURI and HERBERT YAGID attended a meeting at the Westbury Hotel, 69th Street and Madison Avenue, New York, New York.
5. On or about March 22, 1973, the defendants ARTHUR BERARDELLI and LEONARD TURI attended a meeting at the Delta Airlines Terminal, LaGuardia Airport, Queens, New York.
6. On or about March 23, 1973, the defendants SALVATORE THOMAS BADALAMENTE and HERBERT YAGID attended a meeting at Leo's Restaurant, Fort Lee, New Jersey.
7. On or about March 26, 1973, the defendants ARTHUR BERARDELLI and LOUIS STERN a/k/a LOUIS RUSH attended a meeting at the Luxor Baths Hotel, 121 West 46th Street, New York, New York.
8. On or about March 31, 1973, the defendants ARTHUR BERARDELLI and HERBERT YAGID attended a meeting at the Croydon Hotel Coffee Shop, 86th Street and Madison Avenue, New York, New York.

(Title 18, United States Code, Section 371)



COUNT TWO

The Grand Jury further charges:

In or about March or April, 1973, in the Southern District of New York and elsewhere, JERRY ALLEN, SALVATORE THOMAS BADALAMANTE, ARTHUR BERARDELLI, JAMES FEENEY, LOUIS STERN a/k/a LOUIS RUSH, LEONARD TURI and HERBERT YAGID, the defendants, with fraudulent intent, did unlawfully, wilfully and knowingly cause to be transported and transport in interstate commerce] from Chicago, Illinois to Newark, New Jersey, falsely made, [forged, altered and counterfeited securities,] to wit, an American Savings Association passbook and an American Savings Association Certificate of Deposit, knowing the same to have been falsely made, forged altered and counterfeited.

(Title 18, United States Code, Sections 2314 and 2)

George Kaut  
FOREMAN

Whitney North Seymour, Jr.  
Whitney North Seymour, Jr.  
United States Attorney for the  
Southern District of New York

A TRUE COPY  
RAYMOND F. BURGHARDT, Clerk  
By B. Edwards  
Deputy Clerk

- 1                   pkkm                                   Olsberg-direct                                   115
- 2                   A       On or about March 23, 1973, I met Mr. Yagid at
- 3                   the Luxor Baths Hotel, and he advised me we were going
- 4                   out to Fort Lee, New Jersey, to Leo's Restaurant to
- 5                   talk to the man who sits across the river --
- 6                   Q       I am sorry, you will have to keep your voice up.
- 7                   A       Mr. Yagid told me we were going to Fort Lee,
- 8                   New Jersey, to Leo's Restaurant to take to the man who
- 9                   sits across the river about the land deal and about the
- 10                  passbook deal, and he said if the man across the river
- 11                  had any questions about the passbook deal, I should let
- 12                  him, Mr. Yagid, do most of the talking and only answer
- 13                  questions.
- 14                  Q       To what land deal do you refer?
- 15                  A       The land deal in Route 94, New Jersey.
- 16                  Q       The land deal about which you previously
- 17                  testified?
- 18                  A       Yes, sir.
- 19                  Q       Did you in fact go to Leo's Restaurant?
- 20                  A       Yes. I went to Leo's Restaurant. Jimmy Galenti
- 21                  drove me out to Leo's Restaurant and I met Mr. Yagid there
- 22                  and Mr. Badalamente. Mr. Badalamente and Mr. Yagid sat
- 23                  at a table and Mr. Galenti sat at another table.
- 24                  Q       If you know, where is Mr. Galenti today?
- 25                  A       He is deceased.



1 rkkm Olsberg-direct 116

2 Q Were there conversations at Leo's Restaurant  
3 on March 23?

4 A Yes, there was conversations. We were eating  
5 lunch, and I want to reiterate, I did not know at this  
6 time Mr. Badalamente's name, but during this luncheon,  
7 the waiter came over and asked Mr. Badalamente if this  
8 sandwich was satisfactory. Mr. Badalamente was very  
9 irritated with the waiter and told him never to mention  
10 his name in front of anybody again, and that is how I  
11 found out his name. I had never known him to that point.

12 Q Do you see the individual known as Mr.  
13 Badalamente today?

14 A Yes.

15 Q Would you identify him.

16 A He is the gentleman at the end table with the  
17 blue suit and the light blue tie.

18 THE COURT: I thought he identified Mr.  
19 Badalamente yesterday.

20 MR. EBERHARDT: Yes.

21 Q Mr. Olsberg, to the best of your recollection,  
22 what was said at Leo's Restaurant and by whom?

23 A We discussed the land deal and Mr. Badalamente  
24 was going to talk to the people from Premium Construction.  
25 These were people who were entering into a contract to

1 rkkk Olsberg-direct 117  
2 purchase this land, and after this land deal was discussed,  
3 Mr. Badalamente asked Mr. Yagid what happens since the  
4 L.A. trip and any subsequent meetings, and Mr. Yagid  
5 advised Mr. Badalamente that we had been to Los Angeles  
6 and had been called back by Mr. Berardelli, and that I  
7 had attended a meeting at LaGuardia Airport and that Mr.  
8 Yagid and I had attended a meeting at the Westbury Hotel.  
9 He brought him up to date on these meetings in a very  
10 short time, and then Mr. Badalamente asked me if I  
11 thought the passbook deal was good, and if in fact I  
12 could do it, and I stated I would have to see the passbook.  
13 Mr. Badalamente then said if in fact the passbook deal  
14 goes through, have arrangements been made to retrieve  
15 the funds, and Mr. Yagid explained to Mr. Badalamente  
16 that arrangements have been completed to retrieve the  
17 funds, and he explained to Mr. Badalamente about the funds  
18 coming into Fort Pierce, Florida, and how Mr. Yagid would  
19 drive the funds back up to New York.

20 There is some more to this, and I am trying  
21 again not to refer to these notes. I am going to have  
22 to refresh my recollection.

23 Q Go ahead.

24 A I said that all there is left to do now was to  
25 resolve the split of the funds, and Mr. Badalamente and



1 rkkm Olsberg-direct 118  
2 Mr. Yagid said that this matter would have to be settled  
3 after the funds were retrieved because the expenses that  
4 they would put out would have to come off the top, and  
5 at that time there would be a split, and Mr. Badalamente  
6 then stated that he was under the impression that Mr.  
7 Berardelli's uncle would like to see this deal go through  
8 and if it did, it would be a good deal for all of us, and  
9 that essentially was the end of all conversation.

10 Q Following the meeting you just referred to at  
11 Leo's Restaurant on March 23, when was the next occasion  
12 you had to speak with anybody concerning the passbook deal?

13 A On or about March 26, 1973.

14 Q Where was this?

15 A This meeting was at the Luxor Baths Hotel on  
16 46th Street in Manhattan.

17 Q Who was present?

18 A Louis Rush, Aithur Berardelli and myself.

19 Q Mr. Olsberg, were you wearing a body recording  
20 device at this time?

21 A I was.

22 Q Did you subsequently listen to this meeting  
23 that was held on March 26 at the Luxor Baths?

24 A I did.

25 Q After listening to it, does it truly reflect

1 rkkn Olsberg-cross 154

2

3 CROSS EXAMINATION

4 BY MR. NIGRONE:

5 Q Mr. Olsberg, was it your testimony that you  
6 requested permission of the FBI to provide you with a  
7 recording device worn on your person?

8 A Was it my --

9 Q Testimony that you requested permission of the  
10 FBI to be provided with a recording device to be put on  
11 your person?

12 MR. EBERHARDT: I don't believe there is any  
13 such testimony in evidence. I would object on those  
14 grounds.

15 THE COURT: He is asking him if he did. If it  
16 is not in evidence, he could say no.

17 A No, sir, I never asked the FBI to provide me  
18 with any recording equipment.

19 Q You in effect were provided with a recording  
20 device by the FBI?

21 A Yes, I was provided with recording equipment  
22 by the FBI because I had notified them of this transaction  
23 that Mr. Yagid had approached me on.

24 Q At about what point in time was that, that you  
25 notified the FBI about this transaction?



1 rkkm Olsberg-cross 155

2 A Oh or about March 6, 1973.

3 Q How soon thereafter were you given the recording  
4 device?

5 A May I refresh my recollection by looking at my  
6 notes?

7 MR. NIGRONE: That is up to the Court.

8 THE COURT: Of course he could refresh his  
9 recollection.

10 MR. NIGRONE: I have no objection.

11 THE COURT: Don't act as it is a great favor.  
12 Of course he has a right to refresh his recollection.

13 MR. NIGRONE: Perhaps I can help him.

14 THE WITNESS: Perhaps you can clarify your  
15 question to me. You are talking about a body recording  
16 device?

17 Q A Kel device. I am trying to ascertain the  
18 time that permission was granted by you.

19 Would that be on or about March 15? Does that  
20 sound correct to you, March 1973?

21 A No, sir, it does not sound correct to me.

22 THE COURT: What is the question, when was he  
23 provided with body recording devices?

24 MR. NIGRONE: The Kel device, the recording  
25 device.

1 rklm Olsberg-cross 156

2 A I believe it was on or about March 20, 1973.

3 MR. NIGRONE: If your Honor will give me a  
4 moment, please.

5 (Pause)

6 MR. NIGRONE: I wonder if I could show this  
7 to the witness, your Honor, to refresh his recollection.

8 THE COURT: Surely.

9 Whatever you are showing to him, let's mark  
10 that as an exhibit.

11 MR. NIGRONE: Would you mark it for identifica-  
12 tion.

\*\*\* 13 (Defendant Badalamenti Exhibit A marked  
14 for identification.)

15 THE WITNESS: I understand what that document is.

16 Q Can you give me the date on that document?

17 A The document is dated March 15, 1973.

18 Q Is that in your handwriting?

19 A Yes, sir. Just the signature is in my  
20 handwriting.

21 Q Would you read the contents of that, please --

22 MR. NIGRONE: To save the Court time --

23 THE COURT: Are you going to introduce it into  
24 evidence?

25 MR. NIGRONE: Yes.



1 rkkm Olsberg-cross 157

2 THE COURT: Has he identified it? He has  
3 identified his signature.

4 MR. EBERHARDT: The Government will stipulate  
5 as to the admission of this document.

6 (Defendant Badalamente Exhibit A, received  
7 in evidence.)

8 Q Mr. Olsberg, in the body of that instrument  
9 before you, are you requesting permission to use a body  
10 device along -- do you grant the FBI permission to have  
11 you equipped with a body recording device?

12 A You asked me two questions and I will answer  
13 both of them. I did not ask the FBI to equip me with a  
14 body recording device, and the FBI supplies this statement  
15 to me if and when I need a body recording device, they  
16 asked me if I will wear it and sign a statement to that  
17 effect that I would.

18 MR. EBERHARDT: Your Honor, I would suggest  
19 the best evidence of the question just asked Mr. Olsberg  
20 would be the contents of that document.

21 THE COURT: Mr. Eberhardt, you were allowed to  
22 conduct your examination. Let Mr. Nigrone conduct his.  
23 If he wants to show it to the jury, he may. If you want  
24 to, you may.

25 MR. NIGRONE: I have no objection, if the Court

Excerpt from Testimony of Herbert Olsberg - Cross Examination  
Re Badalamente

18a

1 rkkm Olsberg-cross 153

2 pleases.

3 THE COURT: All right.

4 (Pause)

5 THE COURT: I think you would shorten some time  
6 if two of the jurors would read it together.

7 MR. EBERHARDT: I have another copy if it would  
8 save the Court some time.

9 THE COURT: Pass that to the second row.

10 (Pause)

11 MR. NIGRONE: In order to expedite it, would  
12 you mind if I read it to the jury?

13 THE COURT: I think that would be better.

14 (Defendant Badalamente Exhibit A in  
15 evidence was read to the jury.)

16 Q Mr. Olsberg, will you tell the jury how a Kel  
17 transmitter works.

18 A Yes, sir. It is exactly what you called it.  
19 It is a transmitter. It has a metal base with a wire and  
20 a speaker. The wire is approximately twelve inches long  
21 and it fits -- the wire is taped to your body underneath  
22 your shirt and the unit, the metal part of the unit, the  
23 transmitter part of your unit is in your left hand pocket  
24 with an on and off switch.

25 Q Does that have any cassette attached to it?



1 rkkm Olsberg-cross 150

2 A No, sir.

3 Do you want me to finish my explanation?

4 THE COURT: The assumption was you had. If  
5 you hadn't finished, please do. I assumed you had given  
6 a full explanation.

7 THE WITNESS: Anybody talking in or around the  
8 person with that unit, that information and voices are  
9 transmitted to the FBI agents.

10 Q What is the range of that unit?

11 A I am not an electronics expert, but I understand  
12 sometimes it is good for a mile and a half, other times  
13 it is not good for even a half block, and sometimes a  
14 block and a half. It depends on interference and other  
15 atmospheric conditions taking place.

16 Q When was the first time you heard the expression,  
17 "the man across the river"?

18 A The first time I heard the expression was prior  
19 to March 6. It was approximately the end of February or  
20 the middle of February of 1973 when I was dealing with  
21 Mr. Yagid in this land deal on Route 94 in New Jersey.

22 Q From whom did you hear the expression "the man  
23 across the river"?

24 A I heard the expression from Mr. Herbert Yagid  
25 and Louis Rush.

1 rkkm Olsberg;-cross 160

2 Q Who was the first person you heard it from?

3 A I heard it from Mr. Yagid and Mr. Rush almost  
4 simultaneously in the latter part of February, 1973, when  
5 they told me that this land deal could be put through  
6 provided their man across the river who was someone they  
7 reported to, and their partner in any dealings, and he  
8 was the one that could make it work.

9 Q Referring now to your notes --

10 MR. NIGRONE: I have no objection if he refreshes  
11 his recollection to save time.

12 Q On what is marked as No. 4 of your notes, I would  
13 like to read to you on the bottom of that page, the three  
14 lines from the bottom --

15 MR. EBERHARDT: I would object to reading Mr.  
16 Olsberg's notes. They are not in evidence and they are  
17 only used to refresh his recollection.

18 THE COURT: Ask him a question about them.

19 Q In those notes -- more specifically, Mr.  
20 Olsberg, on page 5 of those notes, do you refer to the  
21 man across the river?

22 MR. EBERHARDT: I would object on the same  
23 grounds. Counsel is asking the witness to testify to  
24 something not in evidence.

25 THE COURT: He used the notes to refresh his



Excerpt from Testimony of Herbert Olsberg - Cross Examination  
Re Badalamente

21a

1 rkkm Olsberg-cross 161

2 recollection, so he is now testifying his recollection  
3 by use of the notes.

4 Q Wasn't it your testimony, Mr. Olsberg, on page  
5 5 --

6 THE COURT: That is not proper.

7 Q Would you mind answering the question as  
8 initially asked?

9 MR. RAO: Your Honor, is it possible we could  
10 have a recess for about five or ten minutes?

11 THE COURT: Not now. Let's proceed.

12 Q Do you refer to the man across the river on  
13 page 5 of your notes?

14 A Yes, sir, I do.

15 Q In what manner does that refer to him?

16 THE COURT: I think you ought to ask him the  
17 question. I don't understand what you are doing now.  
18 Are you seeking to establish that there is some day  
19 different from the one he testified to?

20 MR. NIGRONE: I am seeking to establish that  
21 he testified --

22 THE COURT: Ask him a question.

23 Q Did you testify in your direct testimony that  
24 Mr. Bush was going to put this on record with the man  
25 across the river?

Excerpt from Testimony of Herbert Olsberg - Cross Examination  
Re Badalamente

22a

1 rkkm Olsberg-cross 167

2 A Yes, I did testify that Mr. Rush stated in  
3 this meeting; that he was going to put this on record with  
4 the man across the river, and with Mr. Berardelli's people.

5 Q And did you also testify that Herbert Yagid had  
6 advised Berardelli that he was going to put this on  
7 record with the man across the river?

8 A No, I did not testify to that. I said that Mr.  
9 Yagid asked Mr. Berardelli if he understood what Mr.  
10 Rush was saying when he said he was going to put this on  
11 record.

12 Q Who did you understand this man across the  
13 river to be?

14 A At that time I had no idea who the man across  
15 the river was.

16 Q Whom did you know him to be at a later date?

17 A At a later date I knew him to be Mr. Badalamente.

18 Q I now refer you to the telephone conversation  
19 between you and Arthur Berardelli at two o'clock on  
20 March 30.

21 THE COURT: What exhibit?

22 MR. EBERHARDT: I will have it in a moment,  
23 your Honor. The tape is Government Exhibit No. 22 in  
24 evidence. The transcript would be 22 A.

25 Q I refer you to page 6.



Excerpt from Testimony of Herbert Olsberg - Cross Examination  
Re Badalamente

23a

1 rkkm Olsberg-cross 163

2 A Mr. Nigrone, I don't have a copy of that  
3 transcript.

4 MR. EBERHARDT: This is not in evidence, but  
5 if your Honor wishes to have the witness have it for his  
6 recollection.

7 THE COURT: Would you be kind enough to give  
8 him a copy of the transcript?

9 MR. EBERHARDT: Certainly.

10 Q I read to you from your conversation with Arthur  
11 Berardelli on March 30, 1973.

12 "Arthur Berardelli: So you do like the way I  
13 . turn out.

14 "Olsberg: I do.

15 "Berardelli: Do you think the man across the  
16 river will give you any trouble?

17 "Olsberg: No.

18 "Berardelli: And he will approve this?

19 "Olsberg: No. I am going to go see him in a  
20 little while.

21 "Berardelli: Do you think it will be okay?

22 "Olsberg: Yes, I do.

23 "Berardelli: Are you going to get a yes?

24 "Olsberg: Well, Artie, I am going to present  
25 it to him and I know what I mean.

Excerpt from Testimony of Herbert Olsberg - Cross Examination  
Re Badalamente

24a

1 rklm Olsberg:-cross 163

2 "Berardelli: In other words --

3 (Unintelligible)

4 -- he might still say no.

5 "Olsberg: No, I doubt it, because I am familiar  
6 with this here last one you gave me American."

7 Q Isn't it a fact, Mr. Olsberg, at this time the  
8 man you were referring to was Herbert Yagid?

9 A Absolutely.

10 Q Is he the man you saw in approximately a half  
11 hour, the time that is referred to here?

12 A I don't recall whether I saw him in thirty  
13 minutes, but he absolutely was referring to the man  
14 across the river in this instance as being Mr. Yagid  
15 resides in New Jersey.

16 Q Where does Mr. Yagid live?

17 A Mr. Yagid was living in New Jersey at that time,  
18 or at least that is what he informed me of.

19 Q When did you first hear you were going to Leo's  
20 Restaurant in Fort Lee?

21 MR. EBERHARDT: Can we please have a specifics  
22 as to the date.

23 THE COURT: He said when did he first hear.

24 THE WITNESS: I didn't hear the question.

25 Q When did you first hear you were going to Leo's



Excerpt from Testimony of Herbert Olsberg - Cross Examination  
Re Badalamente

25a

1 rkkm Olsberg-cross 1-5

2 Restaurant in Fort Lee?

3 A Which time are you referring to, Mr. Nigrone?

4 Q When was the first time you went to Leo's  
5 Restaurant?

6 A In the early part of March, 1973.

7 Q Can you fix a time?

8 A No, sir, I can't.

9 Q Under what circumstances did you go to Leo's  
10 Restaurant?

11 A I went to Leo's Restaurant to meet Mr. Yagid  
12 and the man that Mr. Yagid referred to was the man who  
13 sits across the river, and who has the say in the land  
14 deal. He has a construction company which he controls  
15 the principal of, and he is in a position to cause this  
16 land deal to come about.

17 Q When did you first hear the name Salvatore  
18 Badalamente?

19 A The first time I heard the name Salvatore  
20 Badalamente -- I heard the name Salvatore prior to that,  
21 but the first time I heard the name Salvatore Badalamente  
22 was on March 23 in Fort Lee, New Jersey, at Leo's  
23 Restaurant where the waiter who was serving Mr. Badalamente  
24 his lunch asked Mr. Badalamente if he would be satisfied  
25 with his sandwich and, as I explained before, Mr.

Excerpt from Testimony of Herbert Olsberg - Cross Examination  
Re Badalamente

26a

1 rkkm Olsberg-cross 106

2 Badalamente became angry with the waiter and said never  
3 call me by that name.

4 Q That was on March 23?

5 A On or about March 23, 1973.

6 Q A Friday, is that correct? It was a Friday.

7 Do you know how many waiters there are in Leo's  
8 Restaurant?

9 A No, sir, I don't know how many waiters there  
10 are in Leo's Restaurant.

11 Q Do you know how many waiters there were that day?

12 A No, I wouldn't know how many waiters there were  
13 in Leo's Restaurant that day.

14 Q Can you describe the waiter that made the  
15 statement to you?

16 A I could try to describe it, but I didn't pay  
17 any particular attention to him.

18 Q Would you describe him as best you can?

19 A I believe to the best of my knowledge, he had  
20 quite a bit of dark hair and he was approximately -- I  
21 really can't.

22 Q How tall was he?

23 A I could not tell you.

24 Q Can you approximate?

25 A No, sir.



Excerpt from Testimony of Herbert Olsberg - Cross Examination  
Re Badalamente

27a

- 1 rkkm Olsberg-cross 167
- 2 Q Was he five feet tall?
- 3 A I was not interested in the waiter.
- 4 Q Could he have been more than five feet tall?
- 5 A I was not interested in the waiter, Mr. Nigrone,
- 6 so I would have no way of identifying him.
- 7 Q Do you have any idea how old he was?
- 8 A No, sir.
- 9 Q Did you notice any distinguishing characteristics
- 10 on the waiter?
- 11 A No, sir.
- 12 Q Did you know whether or not he wore glasses?
- 13 A No, sir.
- 14 Q When you arrived at Leo's Restaurant on that
- 15 day, were you accompanied by anyone?
- 16 A Yes, sir, by Mr. James Galenti.
- 17 Q What time did you arrive in the restaurant?
- 18 A Some time in the early afternoon to the best
- 19 of my knowledge. It was around lunch time.
- 20 Q Who did you meet at the restaurant?
- 21 A Pardon?
- 22 Q Whom did you meet at that restaurant?
- 23 A I met Mr. Herbert Yagid and the gentleman that
- 24 was eventually identified as Mr. Badalamente.
- 25 Q Was Mr. Yagid already in the restaurant when you

Excerpt from Testimony of Herbert Olsberg - Cross Examination  
Re Badalamente

28a

1 rkkm Olsberg-cross 163

2 arrived?

3 A No, sir.

4 Q Who arrived first, you or Mr. Yagid.

5 A I did.

6 Q How soon after your arrival did Mr. Yagid arrive?

7 A Just a few minutes.

8 Q Was Mr. Badalamente present in the restaurant  
9 prior to your arrival?

10 A I did not see him upon entering the restaurant,  
11 but I did see him shortly thereafter. The restaurant has  
12 a division between the front dining room and the back  
13 dining room, and the table that Mr. Badalamente, Mr. Yagid  
14 and I occupied was approximately opposite the door at the  
15 end of the room.

16 Q The door at the end of the room?

17 A In the front dining room. It was different  
18 from the table that we had occupied previously. That  
19 table was in the rear of the restaurant by the bar.

20 Q When you arrived, did you and Mr. Galenti first  
21 go to the bar?

22 A No, sir.

23 Q Were you seated by the maitre d'?

24 A We just took a table, Mr. Galenti and I, and  
25 I told Mr. Galenti to order some food for himself.



Excerpt from Testimony of Herbert Olsberg - Cross Examination  
Re Badalamente

29a

1 rkkh Olsberg-cross 150

2 Q Were you carrying a Kel device on the day you  
3 met Mr. Badalamente?

4 A No, sir, I did not.

5 Q Can you tell us what the topic of conversation  
6 was at the table?

7 A Yes, sir. I repeated before -- may I refresh  
8 my recollection?

9 Q Yes.

10 A You are referring to March 23?

11 Q Yes, I am.

12 A As I stated previously in my testimony, the land  
13 deal was discussed. Mr. Badalamente was going to see what  
14 he could do with these people from Premium Construction,  
15 I believe a Mr. Cigolini.

16 Q Is that Angelo Cigolini?

17 A I believe they referred to him as Chick, but  
18 his name is Angelo Cigolini, and we discussed that land  
19 deal, then Mr. Badalamente inquired how the Los Angeles  
20 trip came out.

21 Q This is on March 23, Mr. Cigolini was present --

22 A He was not present. Again, the only ones present  
23 in that restaurant at that table were me with Mr. Yagid  
24 and Mr. Badalamente.

25 Q And the land deal was discussed?

Excerpt from Testimony of Herbert Olsberg - Cross Examination  
Re Badalamente

30a

1 rkkm Olsberg-cross 170

2 A Yes, sir, it was. That was one of the reasons  
3 for going out there.

4 Q I think we already ascertained that March 23  
5 was a Friday.

6 A I wouldn't know, sir.

7 Q And you testified you were not carrying a body  
8 device at that time?

9 A I said on or about March 23, and I was not  
10 equipped with a body recording device.

11 Q On the date previous to this meeting when you  
12 had occasion to meet with other defendants, were you  
13 equipped with body devices?

14 A Yes, sir, I was.

15 Q On the date prior to that, were you equipped  
16 with a body device?

17 A Which date are you referring to?

18 Q The 21st of March, it is a meeting, the Luxor  
19 meeting.

20 A Yes, I was equipped with a body recording  
21 device.

22 Q With Yagid and Stern at that meeting?

23 A On March 21st?

24 Q Yes.

25 A Jerry Allen, Herbert Yagid, Louis Stern and



Excerpt from Testimony of Herbert Olsberg - Cross Examination  
Re Badalamente

31a

1 rkkm Olsberg-cross 171

2 myself.

3 Q On March 20, there was another meeting at the  
4 Luxor Baths, is that right?

5 A Yes, sir.

6 Q Were Mr. Yagid and Mr. Stern at that meeting?

7 A Yes, they were.

8 Q Were you wired then?

9 A Yes, I was.

10 Q Getting back to Friday, the 23rd, again, who  
11 requested that meeting at Leo's Restaurant?

12 A Mr. Herbert Yagid.

13 Q When was the request made?

14 A I believe it was made several days prior to  
15 that, but he reminded me about it on or about March 23.  
16 I was at many times at the Luxor Baths when I was not  
17 wired.

18 Q That wasn't my question. I didn't ask you that.  
19 You testified, did you not, that you got out  
20 to Leo's Restaurant by car?

21 A Pardon?

22 Q Did Mr. Galenti drive you out to Leo's Restaurant  
23 on the 23rd?

24 A Yes, sir, he did.

25 Q Do you have any idea what time it was when you

Excerpt from Testimony of Herbert Olsberg - Cross Examination  
Re Badalamente

32a

1 rkkm Olsberg-cross 177  
2 arrived?

3 A I believe it was close to noontime to the best  
4 of my recollection.

5 Q Was it your testimony that Mr. Yagid arrived  
6 shortly thereafter?

7 A Yes, sir.

8 Q Would that be ten or fifteen minutes?

9 A No.

10 Q How much time after?

11 A I would say just a few short minutes.

12 THE COURT: We will take a ten minute recess.

13 (Recess)

14 (In open court, jury present)

15 THE COURT: All right, Mr. Nigrone, proceed.

16 CONTINUING CROSS

17 EXAMINATION BY MR. NIGRONE:

18 Q Mr. Olsberg, getting back to our meeting at  
19 Leo's Restaurant on March 23, isn't it true, Mr. Olsberg,  
20 that there was no tape of this meeting at Leo's because  
21 this topic of conversation never took place?

22 A No, sir.

23 Q Is it your testimony, therefore, that Badalamente  
24 expressed an interest in the bank book?

25 A On the 23rd he did, but there was other



Excerpt from Testimony of Herbert Olberg - Cross Examination  
Re Badalamente

33a

1 rkkm Olberg-cross 173  
2 testimony, other words prior to that, that led me to  
3 believe that Ma. Badalamente was a partner of Mr. Yagid  
4 and Mr. Stern, because prior to the March 23rd meeting --  
5 Q I am just directing myself to the 23rd.

6 A Okay.

7 On the 23rd, when Mr. Yagid informed me that  
8 I was to go out to Leo's Restaurant, I did not have time  
9 to get in touch with the FBI agents except by telephone  
10 to notify them I was leaving; right away.

11 Q Did you have time on the 20th to get in touch  
12 with the FBI?

13 A I didn't know that there was a definite meeting  
14 set at that time.

15 Q Did you have time on the 20th to get in touch  
16 with the FBI?

17 A Yes, I did.

18 Q Did you have time on the 21st to get in touch  
19 with the FBI to get a wire?

20 A These were planned prior.

21 Q Did you have time on the 22nd?

22 A This was also planned prior to the 22nd.

23 Q On the 24th, the day after, did you have time  
24 when you were wired?

25 A I have to refresh my recollection.

Excerpt from Testimony of Herbert Olsberg - Cross Examination  
Re Badalamente

34a

1 rkkn Olsberg-cross 17<sup>th</sup>

2 Q The 26th, which was the next working day, did  
3 you have time to get in touch with the FBI?

4 A What took place on the 26th? A meeting at the  
5 Luxor Baths Hotel between Mr. Bush, Mr. Berardelli and  
6 myself.

7 Q Prior to this time, you had heard there was  
8 much colloquy between you and other defendants in this  
9 case about the man across the river.

10 A There was much what?

11 Q Colloquy, conversation back and forth.

12 A Yes, there was.

13 THE COURT: Prior to what time?

14 MR. NIGRONE: Prior to the 23rd.

15 Q Isn't it a fact that after ~~the~~ 25th of March,  
16 every time you met Herbert Yagid, you were wired except  
17 for the 23rd of March at this meeting in Leo's Restaurant?

18 A Not true, sir.

19 Q I would like you to tell me on what day you  
20 were not wired, and at what meeting?

21 A I honestly could not tell you every day and  
22 every time I was not wired, because I was with Mr. Yagid  
23 just about every day from March 6th clear through --

24 MR. RAO: If your Honor please, I will object  
25 to "just about".



1 rkkm Olsberg-cross 175

2 THE COURT: The witness is testifying. He said  
3 he was with him and said just about and continue your  
4 answer.

5 A I was with Mr. Yagid constantly from on or  
6 about March 6 clear through until the meeting at the  
7 Cafe Seventy Two.

8 Q I would like you to give me one specific  
9 example one time after March 9 that you were with Mr.  
10 Yagid when you were not wired, and you are free to refer  
11 to your notes.

12 A Yes, sir, I can give you a specific instance.  
13 I can't give you a specific date.

14 Q So it is strange, therefore, isn't it, that on  
15 three days preceding the 23rd of March, you were wired  
16 when you were with the defendant Yagid?

17 MR. EBERHARDT: Objection as argumentative.

18 Q And on this day you were not wired?

19 THE COURT: Objection sustained.

20 Q Isn't it a fact, Mr. Olsberg, that you were in  
21 constant contact with the FBI?

22 A Yes, sir.

23 Q Did you ever have occasion to speak to Mr.  
24 Salvatore Badalamente on the telephone?

25 A No, I did not.

Excerpt from Testimony of Herbert Olsberg - Cross Examination  
Re Badalamente

36a

1 rkkm Olsberg-cross 176

2 Q Is there at any time that you had any contact  
3 with Mr. Badalamente, were you wearing a body device?

4 A No, sir, I was not.

5 Q You have already testified that you never spoke  
6 to Mr. Badalamente on the telephone, so we could deduce --

7 MR. NIGRONE: I am thinking out loud, so there  
8 were no tapes on that.

9 Q Do you know a man by the name of Angelo Cigolini?

10 A Yes, I do.

11 Q Do you know what business he is in?

12 A Yes, sir. He is alleged to be in the construc-  
13 tion business.

14 Q He alleges to be in the construction business?

15 A It was told to me by Mr. Badalamente in my  
16 first meeting with him that he was in the construction  
17 business. I met Mr. --

18 Q What day was that, that first meeting?

19 A In the very early part of March, 1973.

20 Q Where was that?

21 A At Leo's Restaurant.

22 Q Who was present?

23 A Present at that meeting at the same table was  
24 Mr. Badalamente, Mr. Herbert Yagid, Mr. James Galenti and  
25 myself.



Excerpt From Testimony Of Herbert Olsberg - Cross Examination  
Re Badalamente

37a

1 rkkm

Olsberg-cross

177

2 Q What was the topic of that conversation at that  
3 meeting?

4 A The topic of the conversation at that meeting  
5 revolved entirely around the land deal.

6 Q How were you apprised of this land deal  
7 initially?

8 A How was I apprised of it initially?

9 Q Yes?

10 A You mean how did I come by this land deal  
11 initially?

12 Q That is right.

13 A I came by this land deal initially through some  
14 people I was dealing with.

15 Q Whom did you discuss this with, what defendant  
16 in this case did you discuss it with, initially?

17 A I discussed the land deal with?

18 Q Yes.

19 A I discussed it with Mr. Herbert Yagid and Mr.  
20 Louis Rush.

21 Q What did you say to them, and what did they  
22 say to you?

23 A I was introduced to Mr. Yagid and Mr. Rush by  
24 another individual who had asked me to describe this land  
25 deal to Mr. Yagid, and I in fact gave Mr. Yagid the details

Excerpt From Testimony Of Herbert Olsberg - Cross Examination  
Re Badalamente

38a

1 rkkm Olsberg-cross 178  
2 of the deal and Mr. Yagid said if we could put the deal  
3 together, what would the commission arrangements be, and  
4 we discussed commission arrangement. Mr. Yagid asked me  
5 if I could pay him his \$30,000 commission in cash.

6 Q Can you tell us what that -- you said you  
7 discussed the deal and you are rambling on. I would like  
8 to know what was the deal.

9 A The deal involved approximately 213 acres of  
10 land situated on Highway 94 across the street from the  
11 Playboy Club.

12 Q Were you to represent anyone, buyer, seller?  
13 . What was your position?

14 A I was finder for the seller.

15 Q Did you solicit Mr. Yagid to find a buyer?

16 A No, sir, I did not.

17 Q Can you tell us the circumstances that brought  
18 you from New York to New Jersey with Mr. Yagid to discuss  
19 this particular matter?

20 A Yes, sir, I can.

21 A third party who I knew in New York, I had  
22 described this land deal to that party. I have not met  
23 Mr. Yagid nor Mr. Rush at this time. This particular  
24 individual told me that he had a couple of friends and  
25 that he thought he could move this piece of land, and he



Excerpt From Testimony Of Herbert Olsberg - Cross Examination  
Re Badalamente

39a  
179

1 rkkm

Olsberg-cross

2 went and talked to the friends according to him.

3 Q Mr. Olsberg, were these friends Yagid and Stern?

4 A As it turned out to be, I guess it was because  
5 he eventually introduced me to them.

6 Q And ultimately you discussed this with Mr.  
7 Yagid and Mr. Stern?

8 A Yes, sir, but only at his request.

9 Q At whose request?

10 A At this individual's request who said that Mr.  
11 Yagid wanted to meet me. He gave me his name.

12 Q You discussed this situation with Mr. Yagid,  
13 is that correct?

14 A Yes.

15 Q What did Mr. Yagid say to you with respect to  
16 that?

17 A Mr. Yagid told me that he knew a man who sits  
18 across the river who had some builders that he was  
19 connected with. Mr. Yagid alleged and alluded to the  
20 fact that this man across the river had loaned large  
21 amounts of money to these builders, and that they were  
22 beholden to him.

23 Q When did Mr. Yagid make that statement to you?

24 A In the later part of February, 1973, while we  
25 were discussing this land deal.

Excerpt From Testimony Of Herbert Olsberg - Cross Examination  
Re Badalamente

40a

1 rkkm Olsberg-cross 160

2 Q There came a time when you went there with  
3 Mr. Yagid to discuss this deal, is that right?

4 A Yes, Mr. Nigrone..

5 Q What was said to you and what did you say to  
6 Salvatore Badalamente with respect to this particular  
7 deal when you arrived at Leo's Restaurant?

8 A Mr. Badalamente told me that he would speak  
9 to the principal in the land deal, meaning the people  
10 essentially from Premium Construction Company, and that  
11 he thought that he could cause this land deal to come  
12 about because they were looking for parcels of land.

13 • They were in the construction business --

14 Q But you are the man that had the parcels of  
15 land, you were the man representing the seller?

16 A Yes, sir.

17 Q What was the name of that seller?

18 A Manny Berlingrute.

19 Q So you were Mr. Berlingrute's agent?

20 A No, I was not Mr. Berlingrute's agent at that time,  
21 because I had first met another individual on that land  
22 deal.

23 Q You had first what?

24 A I had first met another individual.

25 Q Who was that individual?



1 rkkm Olsberg-cross 151

2 A That individual is a person that resides in  
3 New Jersey.

4 Q What is his name?

5 A Mr. Cofrancesco.

6 Q What is his name?

7 A Carmen Cofrancesco.

8 Q Was he your partner on that deal?

9 A No, he was not a partner of mine in the deal.

10 He owned a piece of the land, and he introduced me to  
11 Mr. Berlingrute.

12 Q Where does Mr. Cofrancesco live?

13 A Somewhere in New Jersey.

14 Q Getting back to March 23, 1973, Leo's Restaurant,  
15 did Mr. Yagid say anything to Mr. Badalamente concerning  
16 your land situation?

17 A Yes, sir, he did.

18 Q What did he say?

19 A In general he discussed the land situation  
20 because it was being held up at the time. I believe at  
21 that time they had entered into some preliminary agreement.  
22 I would have to have my memory refreshed by looking at  
23 the date on the documents that refer to the land deal.

24 MR. NIGERONE: I have no objection, your Honor.

25 MR. EBERHARDT: May I hand it up to the witness,

132

3 THE COURT: Yes.

7 Q By and between whom?

9 Q And who is Premium Construction Corporation?

12 THE COURT: Mr. Nigrone, you ask questions and  
13 . let the witness answer a question before you go on to  
14 others. You cut off his answers with another question.

17                   A       The check that was put up, the \$10,000 check  
18                   that was put up --

20 I asked you whom do you know to be the principal  
21 of Premium Construction Corporation.

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE  
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580



rkkm Olsberg-cross 133

Q Did Mr. Yagid introduce you to Mr. Badalamente on the basis of you had a land deal and you were looking for someone, you were looking for a buyer?

A Yes, sir, he did.

Q Did Mr. Badalamente in effect tell you that he might know the name of a buyer?

A He in fact told me that he was in a position to cause this sale of this land to come about.

Q Did he ask for any percentage or interest in the sale of this land?

A Yes, he did. He didn't ask me directly. He told me that when we were discussing the commission arrangement in this first meeting, that he would be taken care of because these people were beholden to him, so they in fact now owed him some favors which he would collect at a later time.

Q Which people were beholden to him?

A These people, the purchasers of the land.

Q Meaning whom, Angelo Cigorini and Premium Construction Corporation?

A And probably three other people. I don't know if those three people were part of Premium Construction, but I met two of those partners and I can't recall their names.

Excerpt From Testimony Of Herbert Olsberg - Cross Examination  
Re Badalamente

44a

1 rkkm Olsberg-cross 134

2 Q Was Mr. Yagid present when this discussion  
3 took place?

4 A Mr. Yagid certainly was present, sir.

5 Q And he was there throughout the entire discussion  
6 and the entire meeting of March 23 at Leo's Restaurant,  
7 is that correct?

8 A Yes, sir.

9 Q Where was Jimmy Galenti seated that day?

10 A Jimmy Galenti was seated to my right at another  
11 table by himself, and he was eating bacon and eggs.

12 Q Jimmy Galenti was not a part of that meeting,  
13 is that correct?

14 A Mr. Galenti was not at that table on or about  
15 March 23rd with Mr. Badalamente, Mr. Yagid and myself.

16 Q Is it your testimony that at that meeting of  
17 March 23, other things were discussed besides the land  
18 deal?

19 A Yes, sir, that is my testimony, sir.

20 Q You knew the day before you were coming over  
21 to discuss this land deal, did you not, Mr. Olsberg?

22 A No, sir.

23 Q When did you first find out about it?

24 A As I stated previously, Mr. Nigerson, Mr.  
25 Yagid had told me on or about March 20 there might be a



Excerpt From Testimony Of Herbert Olsberg - Cross Examination  
Re Badalamente

45a

185

1 rkkm Olsberg-cross  
2 meeting, and then he again informed me on the morning of  
3 approximately March 23 that there was going to be a  
4 meeting and there was late in the morning.

5 Q And at that time, you had known for a fact  
6 that Mr. Yagid was in fact involved in this conspiracy,  
7 is that correct?

8 A I knew for a fact --

9 Q That is right, on the 20th. Did you know on  
10 the day of the 20th that Mr. Yagid was firmly fixed in  
11 the conspiracy for which we are here today?

12 A Yes, sir.

13 Q Had you had occasion to carry a body device  
14 concerning meetings at which Mr. Yagid was present on or  
15 before the 20th of March?

16 THE COURT: Hasn't he already answered that?

17 MR. NIGERONE: Excuse me.

18 THE COURT: Have you not gone into that?

19 MR. NIGERONE: Yes, sir.

20 Q The 23rd is a very strange day?

21 MR. EBERHARDT: Objection.

22 THE COURT: The objection is sustained.

23 A I want to answer your first question.

24 MR. EBERHARDT: I think Mr. Olsberg was about  
25 to answer your question.

1 rkkm Olsberg-cross 186

2 THE COURT: He is not going to answer that  
3 question. He was about to answer a question about the  
4 body device, but we went into that before.

5 MR. HIGERONE: I will move on, your Honor.

6 THE COURT: He already testified to that.

7 Q Mr. Olsberg, when did you first meet Mr.  
8 Cigolini?

9 A It was in the very early part of March, I  
10 believe.

11 Q Can you fix a time?

12 A No, sir, I can't. I would have to --

13 Q By whom were you introduced?

14 A I was introduced by Mr. Herbert Yagid.

15 Q What were the circumstances under which you  
16 met Mr. Cigolini?

17 A I went out to a construction office in New  
18 Jersey.

19 Q Do you know what town that was in?

20 A I don't offhand. I had that information in my  
21 files and I did not bring that, because I didn't consider  
22 it part of this.

23 Q How did you get to that office, Mr. Olsberg?

24 A I drove there with Mr. Jimmy Galenti.

25 Q What day was this?



1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

rkkm

Olsberg-cross

137

A I do not recall the date, sir.

Q Did you meet Mr. Yagid there?

A Yes. As a matter of fact I arrived there before  
Mr. Yagid.

Q Excuse me?

A I arrived there before Mr. Yagid.

Q When you arrived at this office with Mr. Galenti,  
then Mr. Yagid, were any other people present there?

A Yes, sir.

Q Who were they?

A Mr. Cigolini and two other people who I can't  
recall their names.

Q Did you ever meet a man by the name of Donald  
Ivaldi?

A Yes, sir.

Q Is that name familiar to you?

A I remember the name "Donald".

Q Was he present there?

A Yes.

Q Was a man by the name of Angelo Cerubi there?

A Yes, sir.

Q What was discussed at that meeting and by whom?

MR. EBERHARDT: I will object to the relevancy  
of this particular meeting unless counsel can tie it into

Excerpt From Testimony Of Herbert Olsberg - Cross Examination  
Re Badalamente

48a

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

rkkm Olsberg-cross

188

the issues of this particular trial.

Q Did there come a time in February of 1973 when  
you were at Vernon Valley in Great Gorge, New Jersey?

MR. EBERHARDT: Objection again to this  
question on the grounds of relevancy.

MR. NIGRONE: This is material.

THE COURT: I think you are entitled to some  
leeway on cross examination.

MR. NIGRONE: We are getting right to the point  
actually.

THE COURT: I would suggest that you telescope  
it a little faster than you have been.

Q Did there come a time when you attended a  
meeting at Vernon Valley in Great Gorge, New Jersey?

A Yes, sir, I did.

Q What date was that, approximately?

A I don't recall, sir.

Q Could it have been in February?

A I don't recall. It was on a weekend, Saturday  
or Sunday. That much I remember.

Q Could it have been Saturday, February 3rd?

A It is possible. I would have to go back and  
refer to my general file on that real estate transaction,  
sir.



1 rklm

Olsberg-cross

189

2 Q Do you want to refer to that file?

3 A I did not bring that file with me, because I  
4 did not know it was part of this.

5 Q By what means of transportation --

6 MR. RAO: Would your Honor direct the witness  
7 to bring that file for my purposes tomorrow?

8 THE COURT: I will not direct him to bring that  
9 file unless I get some indication at some point that it  
10 is relevant.

11 MR. RAO: At the end of the day, can I have an  
12 offer of proof to show the relevancy?

13 THE COURT: Yes, you may.

14 Q By what means of transportation did you arrive  
15 at Vernon Valley?

16 A I arrived at Vernon Valley by automobile with  
17 Mr. James Galenti.

18 Q Were there any other people in your vehicle on  
19 that trip?

20 A Yes, sir. I believe that M. Yagid was along  
21 on that trip, if I am not mistaken.

22 Q Prior to your approaching the Vernon Valley  
23 area on that day, did you stop to pick someone up, a  
24 fourth party?

25 A Yes, sir, I believe we did.

Excerpt From Testimony Of Herbert Olsberg - Cross Examination  
Re Badalamente

50a

1 rkhm Olsberg-cross 190

2 Q What was that man's name?

3 A I believe to the best of my ability that that  
4 was Mr. Carmen Cofrancesco.

5 Q What is his occupation?

6 A Mr. Cofrancesco is in the grading business.

7 Q I am sorry?

8 A Mr. Cofrancesco runs a grading business for his  
9 family, road graders equipment business.

10 Q Is he also Chairman of a County Planning Board?

11 A I believe he is.

12 Q Do you know what County?

13 A It would be Sussex County if I am not mistaken.

14 Q What county is Vernon Valley in --

15 MR. EBERHARDT: Your Honor, I will interpose  
16 an objection.

17 THE COURT: I will sustain the objection. We  
18 are wandering now.

19 Q Will you tell the Court in your own words what  
20 happened at that meeting?

21 A We met Mr. Cigolini at that meeting, and we  
22 picked up Mr. Cofrancesco because Mr. Cofrancesco was a  
23 part owner of that particular piece of property, and we  
24 went to the Sky Air, the Sky House or whatever you call  
25 it where we had a general discussion, and we looked at



1 Olsberg-cross 191

2 the property prior to going there, drove around it and  
3 Mr. Cofrancesco gave Mr. Cigolini some of the background  
4 on the property, and Mr. Cigolini said that he liked the  
5 property and he was going to make the deal.

6 Q Who else was present at that meeting, you, Mr.  
7 Cigolini, Mr. Yagid and Mr. Cofrancesco, is that correct?

8 A Yes, sir.

9 Q Was Mr. Yagid attending that meeting?

10 A I believe he was. I am not positive.

11 Q Did there come a time when anyone left the  
12 table during the conversation for any period of time?

13 A Yes. Many people left the table on and off  
14 since we sat there for quite a long time. Many people  
15 went into the washroom.

16 THE COURT: I think you better make clear to  
17 me what the relevance of this is.

18 (At the bench.)

19 THE COURT: What is this all about?

20 MR. NIGRONE: The reason for these meetings,  
21 the reason for the meeting on the 23rd is what I am  
22 getting to now, and the reason for all these meetings.  
23 That is the heart of my defense.

24 THE COURT: But the point about it, what is the  
25 purpose of going into all these things?

Excerpt From Testimony Of Herbert Olsberg - Cross Examination  
Re Badalamente

52a  
192

1 rklm Olsberg-cross

2 MR. NIGRONE: I am trying to impeach the  
3 credibility.

4 MR. EBERHARDT: Your Honor, defense counsel I  
5 respectfully submit may not be allowed to impeach the  
6 witness on collateral matters. I suggest this is totally  
7 a collateral matter. It must be restricted to things  
8 that are relevant. I would suggest we are going into  
9 an area that is so collateral as to not have any probative  
10 value.

11 THE COURT: I agree with you.

12 MR. RAO: May I explain why I want to go into  
13 Vernon Valley?

14 The prosecutor opened the door when he brought  
15 in that letter on Vernon Valley. He opened the door, we  
16 didn't.

17 Vernon Valley -- Vernon Valley is the initial  
18 beginning of the contact he, the informer, had with my  
19 client.

20 THE COURT: All right, I heard enough.

21 The only point I have about the question, I  
22 have no objection to your going into it but I don't see  
23 where you have to go into it. If you want to go into it  
24 in terms of making a showing that all these other meetings  
25 had connection with that, that is something else. You



1 PKLM Olsberg-cross 193

2 are going into who he was driving out with, and a whole  
3 lot of other nonsense.

4 If you want to show at this meeting that he  
5 went into this meeting and make a connection between this  
6 meeting and the one on the 23rd, fine, get to it.

7 MR. NIGRONE: I have about 30 questions. Can  
8 we take a five minute break?

9 THE COURT: We are going to break for the day.  
10 You cut the questions down. You have ten minutes to go.

11 (In open court)

12 CONTINUING CROSS EXAMINATION

13 BY MR. NIGRONE:

14 Q Did there come a time during the conversation  
15 where you told Mr. Cigolini about a \$20,000,000 Urban  
16 Renewal program in New Jersey?

17 A Yes, sir, I believe I did, but it was not  
18 \$20,000,000.

19 Q How much was it?

20 A It was more like \$8,000,000.

21 Q Isn't it a fact while Mr. Yagid was away from  
22 the table, you told Mr. Cigolini you had a friend who had  
23 the right to give out the contracts in his own discretion  
24 establishing the last word on who was to be awarded the  
25 building contract?

Excerpt From Testimony Of Herbert Olsberg - Cross Examination  
Re Badalamente

54a

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

rkkm

Olsberg-cross

194

A No, sir, that is not correct.

Q Didn't you also tell Cigolini that you had a friend who didn't have to give the contract to the lowest bidder?

THE COURT: Don't answer the question. The question is improper and inappropriate.

Move on. It has nothing to do with this case.

Q Did there come a time that you entered into a contract with Mr. Cigolini?

A I did not enter into a contract with him, Mr. Nigrone. Happy Valley Associates, the owners of the property entered into a contract with Mr. Cigolini and Premium Construction.

Q Who was Happy Valley Associates?

A Happy Valley Associates is headed by Mr. Manny Berligrute, and to the best of my recollection, they have approximately 13 or 15 other people who own pieces of that land or that corporation, Happy Valley Associates, Inc.

Q Did you represent the seller on that?

A No, sir. I am not an attorney.

Q Weren't you negotiating with M & Cigolini with respect to this property?

A When you say negotiating, what do you mean by



Excerpt From Testimony Of Herbert Olsberg - Cross Examination  
Re Badalamente 55a

1 rblm

Olsberg-cross

195

2 negotiating?

3 Q I am asking you if there came a time when Mr.  
4 Cigolini tendered a check in the amount of \$10,000.

5 A Yes.

6 Q To the buyer?

7 A There came a time when Mr. Cigolini presented  
8 a check to me which I in turn gave to an attorney who  
9 sent it to Mr. Jeffers, the attorney for Mr. Berlingrute  
10 and Happy Valley Associates.

11 Q Was that check pursuant to the conditions of --

12 A An escrow agreement?

13 Q Yes.

14 MR. EBERHARDT: I will object to the relevance,  
15 your Honor.

16 THE COURT: I told you that Mr. Nigrone.

17 I indicated to you the area in which I was  
18 going to allow you to go and you have proceeded to dis-  
19 regard that. If you continue to disregard it, I am going  
20 to cut off all inquiries in this area. It has nothing  
21 to do with this case the way you are asking those  
22 questions.

23 Q Did Mr. Yagid give you that \$10,000 check?

24 A I believe to the best of my recollection that  
25 Mr. Cigolini handed it to me.

rkkm

Olsberg-cross

196

Q Where?

A In his office. He had to go to his office to get a check. I really don't recall, Mr. Nigrone, to tell you the truth, whether Mr. Yagid gave it to me or Mr. Cigolini came back to his office and gave me that check.

THE COURT: All right, Mr. Nigrone. Move on, please.

Q Did there come a time when the project by Mr. Cigolini was abandoned?

A What do you mean by abandoned?

Q It was never consummated?

A Yes, there came a time.

Q Do you know whether or not the initial \$10,000 check was returned to Mr. Cigolini?

THE COURT: What difference does that make?

THE WITNESS: I can answer that question.

THE COURT: That is all right. It has nothing to do with anything here.

MR. NIGRONE: I have just one more question, your Honor.

THE COURT: Ask it.

Q Isn't it a fact, Mr. Olsberg, that the two meetings at Leo's Restaurant concerned this particular matter?



Excerpt From Testimony Of Herbert Olsberg - Cross Examination  
Re Badalamente 57a

rkkm

Olsberg-cross

197

A Would you restate that?

Q Isn't it a fact the only reason you had to see  
Mr. Badalamente at Leo's Restaurant was for this matter  
and this matter alone?

A On which date?

Q On both dates.

A That is not true. It is not true because Mr.  
Yagid told me we were going to discuss this passbook deal  
with Mr. Badalamente prior to leaving the Luxor Baths on  
or about March 23.

MR. NIGRONE: I have no further questions.

1 48kgs

589

2 of that application is the verdict in the case.

3 With respect to any fact matter, it is your recol-  
4 lection and yours alone that governs. Anything that counsel,  
5 either for the Government or for the defense, may have said  
6 with respect to matters in evidence during the trial, in a  
7 question, in a colloquy with the Court, in argument or in  
8 summation, is not to be substituted for your own recollection  
9 of the evidence.

10 So, too, anything the Court may have said during  
11 the trial, or may refer to during the course of these instruc-  
12 tions as to any factual matter in evidence is not to be taken  
13 in lieu of your own recollection. The case must be decided  
14 by you upon the sworn testimony of the witnesses, and such  
15 exhibits as were received in evidence.

16 At times throughout this trial, I have been called  
17 upon to make rulings on various matters of law, such as when  
18 a question put to a witness was objected to, and after a  
19 question was answered a motion was made to strike the answer.  
20 I have sustained some objections and I have overruled others.  
21 I have struck out answers and rejected exhibits that were  
22 offered. It is essential in the performance of your duty that  
23 when anything was ordered stricken from the record or rejected,  
24 you put it out of your mind and disregard it. Similarly, if  
25 a question was asked and an objection to that question



1 49kgs

2 was sustained and no answer was given, the question itself  
3 should play no part in your consideration of the case. Please  
4 do not concern yourselves at all with my reasons for any of  
5 these rulings. These are purely legal matters.

6 Conferences at the bench were conducted at the  
7 request of the attorneys. As I have advised you, these  
8 conferences were solely on questions of law and are of no  
9 concern to you. You are not to draw any inferences against  
10 either side because of requests for such conferences, and I  
11 might add, nor are you to draw any inferences because I have  
12 denied from time to time holding conferences that were requested.

13 I have permitted each of you to take notes during the  
14 course of this trial. I expect you to use whatever notes you  
15 took merely as memory aids. They should not be allowed to  
16 take precedence over your independent memory of the facts.  
17 Moreover, merely because a fellow juror may have memorialized  
18 in his or her notes something contrary to your recollection is  
19 not to be taken by you to mean that your memory is in error.  
20 It is your own recollection of the facts and yours alone which  
21 is controlling.

22 In deciding this case, you will be called upon to  
23 consider both direct evidence and circumstantial evidence. It  
24 is well to explain now the difference between these two types  
25 of evidence.

1 50kgs

591

2 Direct evidence is where a witness or a participant  
3 testified as to what he saw, heard or observed, what he knows  
4 of his own knowledge, something which comes to him by virtue  
5 of his senses. A document can also contain direct evidence.

6 Circumstantial evidence is evidence of facts and  
7 circumstances from which one may infer connected facts which  
8 reasonably flow in the common experience of mankind. Stated  
9 somewhat differently, circumstantial evidence is that evi-  
10 dence which tends to prove a disputed fact by proof of other  
11 facts which have a logical tendency to lead the mind to a  
12 conclusion that those facts exist which are sought to be  
13 established.

14 The circumstantial facts or facts upon which it is  
15 sought to base a disputed fact must be shown and not left to  
16 rest on conjecture, and when shown, in order to use it to  
17 prove a disputed fact therefrom, it must appear that the  
18 disputed fact in question is the only one that can follow from  
19 the circumstantial fact, that any other explanation is fairly  
20 and reasonably excluded.

21 Let me give you a practical illustration of what  
22 that means. I think it is raining outside now as I look out  
23 of the window, and assuming it is raining, all of us could  
24 say that it is raining. We see it, we feel it, we know it is  
25 there, if we were outside. Suppose we came in here this



1 51kgs

2 morning when it wasn't raining and the blinds were drawn and  
3 in the course of these deliberations we begin to see people  
4 come into this courtroom with umbrellas, with raincoats, and  
5 they are wet. Then we will conclude that it is raining out-  
6 side although we can't see it, and this is the difference and  
7 the meaning of circumstantial evidence.

8 Circumstantial evidence, if believed, is of no less  
9 value than direct evidence for in any case you must be con-  
10 vinced beyond a reasonable doubt of the guilt of a defendant.

11 There are times when different inferences may be  
12 drawn from facts, whether they are proved by direct or circum-  
13 stantial evidence. The Government asks you to draw one set  
14 of inferences while the defendants ask you to draw another.  
15 It is for you to decide and for you alone which inferences you  
16 will draw.

17 It is your function to determine the truth or falsity  
18 of the testimony of each witness. No inference as to the  
19 credibility of any witness should be drawn from the fact that  
20 upon occasion I have asked questions of a witness. My questions  
21 were only intended for clarification or to expedite matters.  
22 They were not intended to suggest any opinion as to the  
23 credibility of a witness who appeared before you.

24 Now, how do you determine the truth and how do you  
25 appraise the credibility of a witness? Well, as I told you

1 52kgs

593

2 before, simply put, you use your plain, everyday common sense.

3 In weighing the testimony of the witnesses, you can  
4 consider their relationship to the Government or to a defen-  
5 dant, as the case may be, and any bias or interest in the out-  
6 come of the case, his or her manner while testifying, what was  
7 the witness' candor, whether he or she equivocated, whether he  
8 was direct or indirect in some testimony, whether he was frank  
9 and straightforward, open or deliberately confusing, truthful  
10 or evasive, the extent to which he has been corroborated or  
11 contradicted by other credible evidence or whether there were  
12 inconsistencies within the witness' testimony, his criminal  
13 record, if any, and whether he changed his testimony.

14 An interested witness is not necessarily unworthy of  
15 belief. It is a factor, however, which you may consider in  
16 determining the weight and credibility to be given to that  
17 witness' testimony.

18 If you find that any witness has wilfully testified  
19 falsely to any fact, you may disregard all his testimony or  
20 accept such part of it as you believe worthy of belief as it  
21 appeals to your reason or judgment.

22 A witness may be discredited by contradictory  
23 evidence or by evidence that at other times the witness has  
24 made statements which are inconsistent with his or her testi-  
25 mony here. If you believe that any witness has been discredited



1 53kgs

594

2 in this manner, you may give the testimony of that witness  
3 whatever credibility, if any, you think it deserves.

4 The weight of the evidence is not necessarily  
5 determined by the number of witnesses testifying on either  
6 side. You should consider all the facts and circumstances  
7 in evidence to determine which of the witnesses are worthy of  
8 greater credence. You may find that the testimony of a  
9 smaller number of witnesses on one side is more credible than  
10 the testimony of a greater number of witnesses on the other  
11 side.

12 The Government is entitled under the law to use  
13 various investigative methods, including the use of recording  
14 equipment. I instruct you that as a matter of law, the use  
15 of electronic equipment in this case was proper, lawful, and  
16 did not violate the defendants' rights. The fact that such  
17 investigative techniques were used, therefore, should not in  
18 any way concern you or affect your consideration of the issues  
19 before you.

20 The fact that the Government is a party here, that  
21 the prosecution is brought in the name of the United States of  
22 America, entitles it to no greater consideration than that  
23 accorded to any other party to the litigation. By the same  
24 token, it is entitled to no less consideration. All the  
25 parties, Government and individuals alike, stand equal before

54kgs

595

this court of justice.

As I advised you at the start of this trial, the indictment is merely an accusation, a charge. It is not evidence or proof of a defendant's guilt and no inference of any kind may be drawn from the indictment.

The Government has the burden of proving the charges against each defendant beyond a reasonable doubt. It is a burden that never shifts, and remains upon the Government throughout the entire trial. A defendant does not have to prove his innocence. On the contrary, he is presumed to be innocent of the accusation contained in the indictment.

The presumption of innocence was in his favor at the start of the trial, continued in his favor throughout the trial, is in his favor even as I instruct you now. It remains in his favor during the course of your deliberations in the jury room. It is removed only if and when you are satisfied that the Government has sustained its burden of proving the guilt of a defendant beyond a reasonable doubt.

Now, what is a reasonable doubt? It is a doubt based on reason, which arises from the evidence or lack of evidence in the case. It is a doubt that a reasonable man or woman might entertain. It is not a fanciful or speculative doubt. It is not an imagined doubt, it is not a doubt that a juror might conjure up in order to avoid performing an



1 55kgs

596

2 unpleasant task or duty. It is not proof to an absolute  
3 certainty.

4 Let me repeat: it is a reasonable doubt. It is a  
5 doubt that appeals to your reason, to your judgment, to your  
6 common understanding and your common sense, a doubt that will  
7 cause you to hesitate to act in matters of importance in your  
8 daily lives.

9 On the other hand, the Government does not have to  
10 prove the guilt of the defendants beyond all possible doubt.  
11 If when you consider the evidence in this case, you have a  
12 reasonable doubt that the Government has proved any element of  
13 the crime charged, then you must return a verdict of acquittal.

14 You may not return a guilty verdict simply because  
15 you feel that it is more likely than not that the defendant  
16 committed the crime charged. A guilty verdict is only appro-  
17 priate if each and every one of you is satisfied that the  
18 defendant's guilt has been proved beyond all reasonable doubt.

19 There has been testimony by Mr. Olsberg, an indivi-  
20 dual commonly known as an informant or informer. The law  
21 permits the use of informers, provided the rights of a  
22 defendant are not violated and, therefore, whether or not you  
23 approve of the use of informers should not enter into your  
24 deliberations.

25 You are required, however, to consider the

1 56kgs

2 credibility of this witness and to do this you must use the  
3 guidelines which I gave you earlier.

4 The fact that a person has been convicted of a  
5 serious crime, especially one bearing on his veracity, may be  
6 considered by you as bearing on his credibility as a witness  
7 in this case.

8 You may consider whether Mr. Olsberg's testimony was  
9 a fabrication, inspired by his own motives or self-interest  
10 or personal advantage or induced by a promise or a hope or an  
11 expectation of favorable consideration by the Government in  
12 connection with these or other matters. You should also  
13 consider whether Olsberg's testimony was motivated by any  
14 hostility towards the defendants.

15 Once again, I must remind you that merely because  
16 Olsberg may have been previously convicted or had an interest  
17 in this case or was hostile to a defendant does not mean his  
18 testimony was not truthful and candid. Those factors indi-  
19 cate that you should view his testimony with caution, but you  
20 must determine the weight to be given to his testimony based  
21 on whether or not, and to what extent, he is to be believed.

22 The Government also called as a witness Jerry Allen,  
23 who, if his testimony is to be accepted, was an accomplice in  
24 the crimes charged against the defendants in this case.

25 In the prosecution of crime, the Government is



1 57kgs

598

2 frequently called upon to use witnesses who are accomplices.  
3 Often it has no choice. The Government must rely upon wit-  
4 nesses or transactions such as they are.

5 The fact that Allen has been convicted of a serious  
6 crime, especially one bearing on his veracity, may be  
7 considered by you as bearing on his credibility as a witness  
8 in this case.

9 There is no requirement in the federal courts that  
10 the testimony of an accomplice be corroborated. The Govern-  
11 ment contends that Jerry Allen's testimony is corroborated by  
12 other evidence with respect to several key portions of his  
13 testimony. However, even without such corroboration, conviction  
14 may rest upon the testimony of an accomplice, if you believe  
15 it and find it credible. It does not follow that because a  
16 person has acknowledged participation in the crimes charged  
17 against the defendant that he is incapable of giving a true  
18 version of what he testified to in the case on trial.

19 His testimony, however, should be viewed with  
20 caution and scrutinized with care. The fact that a witness is  
21 an accomplice may be considered by you as bearing on his  
22 credibility. Was his testimony inspired by any motive of  
23 reward, of self-interest, or hostility to the defendants so  
24 that he gave false or colored testimony against them in this  
25 court before you? If you find that it was, you ought,

1 58kgs

599

2 unhesitatingly, to reject it.

3           However, after a cautious and careful examination  
4 of the accomplice's testimony and his demeanor upon the  
5 witness stand, if you are satisfied that he told the truth  
6 here as to certain events, there is no reason why you should  
7 not accept it as credible and act upon it accordingly.

8           Let me now turn to the indictment in this case.  
9 Stated briefly, the first count charges that Defendants  
10 Badalamente, Stern and Yagid conspired with each other and  
11 with four other named individuals to transport in interstate  
12 or foreign commerce falsely made, forged, altered and counter-  
13 feited passbooks and certificates of deposit. The second  
14 count charges that Defendants Stern and Yagid actually caused  
15 to be transported in interstate commerce a falsely made,  
16 forged, altered and counterfeited passbook and certificate of  
17 deposit.

18           It is your obligation to consider separately each  
19 of the individual charges or counts of the indictment and to  
20 decide whether as to each count, the Government has or has not  
21 sustained its burden of proving beyond a reasonable doubt the  
22 guilt of each defendant named in that particular count.

23           Let me read the indictment:

24           Count 1: The grand jury charges that from on or  
25 about January 1, 1973 up to and including the date of filing



1 59kgs

2 of this indictment in the Southern District of New York and  
3 elsewhere, Jerry Allen, Salvatore Thomas Badalamente, Arthur  
4 Berardelli, Louis Stern also known as Louis Rush, Leonard  
5 Turi and Herbert Yagid, the defendants, unlawfully, wilfully  
6 and knowingly did combine, conspire, confederate and agree  
7 together and with each other and with other persons to the  
8 grand jury known and unknown, to commit certain offenses  
9 against the United States, to wit, to violate Title 18, United  
10 States Code, Section 2314.

11 2: It was part of said conspiracy that the defen-  
12 dants with fraudulent intent would unlawfully, wilfully and  
13 knowingly transport and cause to be transported in interstate  
14 and foreign commerce, falsely made, forged, altered and counter-  
15 feited securities, to wit, passbooks and certificates of  
16 deposit from the Bank of America, Los Angeles, California, the  
17 Home Savings and Loan Association in Los Angeles, California,  
18 and from American Savings Association in Dallas, Texas, knowing  
19 the same to be falsely made, false, forged, altered and  
20 counterfeited.

21 2: Among the means whereby said defendants agreed  
22 to carry out the conspiracy were the following: A) Defendants  
23 Jerry Allen, Arthur Berardelli, Louis Stern also known as  
24 Louis Rush, and Herbert Yagid, would make arrangements to  
25 secure a falsely made, forged, altered and counterfeited

1 60kgs

601

2 passbook of either Homes Savings and Loan Associates, Los  
3 Angeles, California or Bank of America, Los Angeles, California,  
4 for use thereafter as a collateral for a loan from a Swiss  
5 bank.

6 B: The defendant Herbert Yagid would travel from  
7 New York, New York, to Los Angeles, California for the purpose  
8 of securing a falsely made, false, forged and altered, counter-  
9 feited passbook of either Home Savings and Loan Association,  
10 Los Angeles, California or Bank of America, Los Angeles,  
11 California.

12 C: The defendants Jerry Allen, Arthur Berardelli,  
13 Louis Stern also known as Louis Rush, Leonard Turi and Herbert  
14 Yagid would make arrangements to secure a falsely made,  
15 forged, altered and counterfeited passbook of American Savings  
16 Association, Dallas, Texas, for use thereafter as collateral  
17 for a loan on a Swiss bank.

18 D: The defendant Herbert Yagid would travel from  
19 New York, New York to Chicago, Illinois, to secure a falsely  
20 made, forged, altered and counterfeited passbook of American  
21 Savings Association, Dallas Texas.

22 E: The defendant Leonard Turi would travel from  
23 Chicago, Illinois to Newark, New Jersey to deliver a falsely  
24 made, forged, altered and counterfeited passbook of American  
25 Savings Association of Dallas, Texas.



1 61kgs

602

2 F: The defendants Jerry Allen, Salvatore Thomas  
3 Badalamente, Arthur Berardelli, Louis Stern also known as  
4 Louis Rush, Leonard Turi and Herbert Yagid would arrange to  
5 share in the illegal proceeds obtained through the loan to  
6 be secured by the falsely made, forged, altered and counter-  
7 feited passbook.

8 In furtherance of the conspiracy and to effect the  
9 objects thereof, the defendants in the Southern District of  
10 New York and elsewhere committed and caused to be committed  
11 certain overt acts, which I shall read to you in a few  
12 minutes. But first I shall instruct you on the law applicable  
13 to Count 1:

14 The conspiracy statute is Section 371 of Title 18  
15 of the United States code. It provides:

16 If two or more persons conspire either to commit any  
17 offense against the United States or to defraud the United  
18 States or any agency thereof in any manner or for any purpose  
19 and one or more of such persons do any act to effect the object  
20 of the conspiracy, then they are guilty of conspiracy.

21 In this case it is charged that the object of the  
22 conspiracy was a violation of Section 2314 of Title 18, which  
23 reads in pertinent part:

24 Whoever with unlawful or fraudulent intent transports  
25 in interstate or foreign commerce any falsely made, forged,

1 62kgs

603

2 altered or counterfeited securities, knowing the same to have  
3 been falsely made, forged, altered or counterfeited, is guilty  
4 of committing a crime.

5 In order to find a defendant guilty of the conspiracy  
6 charged in the first count of the indictment, you must find  
7 beyond a reasonable doubt:

8 First, that sometime between January 1, 1973 and  
9 the date of the filing of the indictment, which was May 21,  
10 1973, an agreement existed between each defendant on trial and  
11 any other person, whether on trial or not; that it was part  
12 of this agreement to do the following:

13 A: To make arrangements to secure a falsely made,  
14 forged, altered or counterfeited passbook and certificate of  
15 deposit from the Bank of America or Home Savings and Loan  
16 Association or American Savings Association for use thereafter  
17 as collateral for a loan from a Swiss bank.

18 B: To transport or cause to be transported in inter-  
19 state or foreign commerce a falsely made, forged, altered and  
20 counterfeited passbook and certificate of deposit from the  
21 Bank of America or Home Savings and Loan Association or  
22 American Savings Association, knowing that said passbook and  
23 certificate of deposit would be falsely made, forged, altered  
24 or counterfeited.

25 C: To make arrangements to share in the illegal



1 63kgs

604

2 proceeds obtained through the loan to be secured by the  
3 falsely made, forged, altered and counterfeited passbook.

4 Second, that the defendant whose guilt or innocence  
5 you are considering knowingly and wilfully became a partici-  
6 pant in the conspiracy with knowledge of its alleged criminal  
7 purpose.

8 Third, that at least one of the alleged conspirators,  
9 not necessarily the defendant you are considering, knowingly  
10 committed at least one of the overt acts set forth in the  
11 indictment at or about the time and place alleged.

12 If the Government fails to establish each of these  
13 three elements beyond a reasonable doubt, you must acquit the  
14 defendant as to Count 1. If the Government succeeds in  
15 satisfying this burden of proof, you must convict.

16 As I have informed you, the first of the elements  
17 which you must find that the Government has proved beyond a  
18 reasonable doubt is that the conspiracy charged in the indict-  
19 ment existed. First I want to discuss with you what the term  
20 "conspiracy" means, because that term is here used in a legal  
21 context and therefore has a somewhat different meaning than it  
22 has when it is used colloquially.

23 What is a conspiracy? A conspiracy is a combination  
24 or agreement of two or more persons to accomplish a criminal or  
25 unlawful purpose. The gist of the crime of conspiracy is the

1 64kgs

605

2 unlawful combination or agreement to violate the law. Whether  
3 or not the defendants finally accomplished what it is alleged  
4 they conspired to do is immaterial. That is to say, the  
5 Government is not obliged to prove that a purpose of the  
6 conspirators was attained.

7           It has often been said that a conspiracy is a  
8 partnership in crime in which each members becomes the agent  
9 of every other member. To establish a conspiracy, however,  
10 the Government is not required to show that the alleged  
11 conspirators sat around a table and entered into a solemn  
12 compact, orally or in writing, stating that they have formed  
13 a conspiracy to violate the law and setting forth details of  
14 the plans. It is sufficient if two or more persons in any  
15 manner through any contrivance, impliedly or tacitly, come  
16 to a common understanding to violate the law. Express  
17 language or specific words are not required to indicate assent  
18 or attachment to a conspiracy. On the other hand, mere  
19 similarity of conduct among various persons, and the fact  
20 that they may have associated with each other and may have  
21 assembled together and discussed common aims and interests  
22 does not necessarily establish the proof of the existence  
23 of a conspiracy.

24           If upon consideration of all the evidence, direct  
25 and circumstantial, testimonial and documentary, you find



1 65kgs

606

2 beyond a reasonable doubt that the minds of at least two of  
3 the alleged conspirators met in an understanding way and that  
4 they agreed as I have explained a conspiratorial agreement to  
5 you, to work together in furtherance of the unlawful scheme  
6 alleged in the indictment, then proof of the existence of the  
7 conspiracy is satisfied.

8           Once you are satisfied that the conspiracy charged  
9 existed, you must ask yourselves who its members were. You  
10 may not assume that a defendant joined a conspiracy simply  
11 because you are convinced that he knew or was associated or  
12 had dealings with people who conspired to violate the law.  
13 Similarly, the mere fact that two persons or more are on trial  
14 together cannot be considered in any way as indicating that  
15 they participated in a conspiracy to violate the law.

16           All of the conspirators need not be acquainted with  
17 each other. They may not have previously associated together.  
18 One of the defendants may know only one other member of the  
19 conspiracy, but if he enters into an unlawful agreement with  
20 that other member of the conspiracy, he becomes a party  
21 thereto.

22           To conclude that a defendant was a member of a  
23 conspiracy, you must find that he knew the unlawful purpose  
24 of the alleged conspiracy, that knowing the purpose he  
25 intentionally joined in the endeavor and that he had an

1 66kgs

607

2 interest in making it succeed. It is not necessary, however,  
3 that you find that each conspirator was fully informed as to  
4 the details or the full scope of the conspiracy, or partici-  
5 pated in every aspect of the conspiracy. A person becomes  
6 a member of a conspiracy by associating himself with a common  
7 plan or scheme, knowing the central aim or principal purpose  
8 of that common plan or scheme and intending to help bring  
9 about its success.

10 Knowledge, wilfullness, and intent exist in the  
11 mind. Since it is not possible to look into a man's mind  
12 to see what went on, the only way you have of arriving at  
13 a decision on these questions is for you to take into  
14 consideration all the facts and circumstances shown by the  
15 evidence, including the exhibits, and to determine from all  
16 such facts and circumstances whether the requisite knowledge,  
17 wilfullness and intent were present at the time in question.  
18 In making this determination, you should presume that a person  
19 intends the natural and probable consequences of his acts.

20 You will recall that throughout the trial, the acts  
21 and statements of one alleged co-conspirator in the absence of  
22 other alleged co-conspirators were received in evidence subject  
23 to connection, that is, only with respect to the particular  
24 person or persons making them.

25 However, if you find that a conspiracy existed, then



1 67kgs

608

2 in considering whether or not a particular defendant was a  
3 member of the conspiracy, you may rely not only on his own  
4 statement, but on the statements and declarations of the  
5 other alleged co-conspirators.

6 Moreover, if you find that a conspiracy existed,  
7 then any act or declaration made during the conspiracy and in  
8 furtherance of it by a person found by you to have been a  
9 member of the conspiracy may be considered against any defen-  
10 dant whom you find was also a member, even though such act  
11 or declaration was made in the absence and without the  
12 knowledge of that defendant.

13 Now we come to the third element you must consider  
14 as to Count 1. If you have found that the alleged conspiracy  
15 existed and that the defendant whose guilt you are considering  
16 was a member of it, then you must consider the overt act  
17 requirement.

18 The offense of conspiracy is complete when the  
19 unlawful agreement is made and any single overt act is done  
20 by one of the alleged conspirators in furtherance of the  
21 conspiracy.

22 By the term "overt act," we mean an act committed  
23 in an effort to accomplish some object or purpose of the  
24 conspiracy. The overt act in this sense need not be a crime  
25 in itself. It must, however, be an act which follows from the

1 68kgs

609

2 conspiracy and is directed towards accomplishment of the  
3 criminal purpose of the conspiracy. I will now read the overt  
4 acts charged in the indictment.

5 In furtherance of the conspiracy and to effect the  
6 objects thereof, the defendants in the Southern District of  
7 New York and elsewhere committed and caused to be committed  
8 the following overt acts, among others:

9 1) On or about March 20, 1973, the defendant  
10 Herbert Yagid attended a meeting at Apartment 23-G, 300 East  
11 74th Street, New York, New York.

12 2) On or about March 20, 1973, the defendants Arthur  
13 Berardelli, Louis Stern also known as Louis Rush, and Herbert  
14 Yagid attended a meeting at the Luxor Baths Hotel, 121 West  
15 46th Street, New York, New York.

16 3) On or about March 21, 1973, the defendants Jerry  
17 Allen, Louis Stern also known as Louis Rush, and Herbert  
18 Yagid attended a meeting at the Luxor Baths Hotel, 121 West  
19 46th Street, New York, New York.

20 4) On or about March 22, 1973, the defendants  
21 Arthur Berardelli, Leonard Turi and Herbert Yagid attended  
22 a meeting at the Westbury Hotel, 69th Street and Madison  
23 Avenue, New York, New York.

24 5) On or about March 22, 1973, the defendants  
25 Arthur Berardelli and Leonard Turi attended a meeting at the



1 69kgs

610

2 Delta Airlines Terminal, LaGuardia Airport, Queens, New York.

3 6) On or about March 23, 1973, the defendants  
4 Salvatore Thomas Badalamente and Herbert Yagid attended a  
5 meeting at Leo's Restaurant, Fort Lee, New Jersey.

6 7) On or about March 26, 1973, the defendants  
7 Arthur Berardelli and Louis Stern, also known as Louis Rush,  
8 attended a meeting at the Luxor Baths Hotel, 121 West 46th  
9 Street, New York, New York.

10 8) On or about March 31, the defendants Arthur  
11 Berardelli and Herbert Yagid attended a meeting at the Croydon  
12 Hotel coffee shop, 86th Street and Madison Avenue, New York,  
13 New York.

14 Title 18, United States Code, Section 371.

15 If you find beyond a reasonable doubt that a  
16 conspiracy existed as charged in the indictment, and that  
17 during the existence of the conspiracy at least one of the  
18 overt acts alleged was knowingly done by one or more of the  
19 conspirators in the furtherance of some object of the  
20 conspiracy, proof of the conspiracy offense is then complete.  
21 It is complete as to each defendant found by the jury beyond  
22 a reasonable doubt to have been knowingly and wilfully a  
23 member of the conspiracy at the time the overt act was  
24 committed, regardless of which of the conspirators committed  
25 the overt act.

1 70kgs

611

2 While the indictment charges in Count 1 that the  
3 conspiracy began on or about January 1, 1973 and continued  
4 to the day of its filing, May 21, 1973, it is not essential  
5 that the Government prove that the conspiracy started and  
6 ended at or about those specified dates. It is sufficient  
7 if you find that in fact a conspiracy was formed and existed  
8 for some substantial time within the period set forth in the  
9 indictment, and that at least one of the overt acts was  
10 committed in furtherance thereof in that period.

11 Count 2 of the indictment reads as follows:

12 The grand jury charges in or about March or April  
13 of 1973, in the Southern District of New York and elsewhere,  
14 Jerry Allen, Arthur Berardelli, Louis Stern, also known as  
15 Louis Rush, Leonard Turi, and Herbert Yagid, the defendants,  
16 with fraudulent intent did unlawfully, wilfully and knowingly  
17 cause to be transported and transported in interstate  
18 commerce from Chicago, Illinois to Newark, New Jersey, falsely  
19 made, forged, altered and counterfeited securities, to wit,  
20 American Savings Association passbook and American Savings  
21 Association certificate of deposit, knowing the same to have  
22 been falsely made, forged, altered and counterfeited, Title  
23 18, United States Code, Section 2314 and 2.

24 You will recall that Section 2314 of Title 18  
25 provides that whoever with unlawful or fraudulent intent



1 71kgs 612  
2 transports in interstate or foreign commerce any falsely made,  
3 forged, altered or counterfeited securities, knowing the same  
4 to have been falsely made, forged, altered or counterfeited,  
5 is guilty of a crime.

6 It is not necessary for the Government to show that  
7 the defendants Stern and Yagid physically committed the crime  
8 themselves. Section 2 of Title 18 of the United States Code  
9 provides, in pertinent part, that: Whoever commits an offense  
10 against the United States or aids, abets, counsels, commands,  
11 induces or procures its commission, or whoever wilfully causes  
12 an act to be done which, if directly performed by him or  
13 another, would be an offense against the United States, is  
14 guilty of that offense.

15 Thus, a person who aids and abets another to commit  
16 an offense is just as guilty of that offense as he would be had  
17 he committed it himself.

18 Before you can conclude that a person aided and  
19 abetted, you must first find that the substantive crime charged,  
20 in this case, transporting in interstate commerce a falsely  
21 made, forged, altered and counterfeited passbook and certifi-  
22 cate of deposit, was in fact committed. Secondly, you must  
23 determine that the defendant in some way associated himself  
24 with the criminal venture, that he participated in it as  
25 something he wished to bring about, and that by his actions,

1 72kgs

613

2 he tried to make the crime succeed. You must find more than  
3 the defendant's mere presence during or knowledge of an offense.

4 The Government does not contend that the defendants  
5 Stern and Yagid physically committed the crime of transporting  
6 the forged American Savings Association passbook and certifi-  
7 cate of deposit in interstate commerce. Nor does the Govern-  
8 ment contend that each defendant is necessarily an aider and  
9 abettor. What the Government contends is that the defendants  
10 Stern and Yagid are guilty of the substantive offense  
11 charged in Count 2 because it was committed in furtherance of  
12 and during the course of the unlawful conspiracy of which they  
13 were members.

14 You will recall that I told you that a conspirator  
15 is liable for the acts and statements of his co-conspirators  
16 provided they were made within the scope of the unlawful agree-  
17 ment as he saw it during the pendency of the conspiracy and  
18 in furtherance of its objectives.

19 To find Mr. Stern or Mr. Yagid guilty of the crime  
20 of transporting the forged American Savings Association pass-  
21 book and certificate of deposit in interstate commerce as  
22 charged in Count 2 of the indictment, you must find beyond a  
23 reasonable doubt:

24 First, that on or about April 2, 1973, Leonard Turi  
25 transported a forged or counterfeited American Savings



1 73kgs

614

2 Association passbook and certificate of deposit in interstate  
3 commerce.

4 Second, that on or about April 2, 1973, a conspiracy  
5 existed to transport the forged passbooks and certificates of  
6 deposit in interstate or foreign commerce.

7 Third, that the defendant you are considering was  
8 a member of the conspiracy to transport the forged passbook  
9 and certificate of deposit in interstate or foreign commerce.

10 Fourth, that Leonard Turi was a member of the same  
11 conspiracy to transport the forged passbook and certificate  
12 of deposit in interstate or foreign commerce.

13 Fifth, that Leonard Turi's transportation of the  
14 forged American Savings Association passbook and certificate  
15 of deposit was a crime committed in furtherance of the same  
16 conspiracy.

17 Sixth, that the American Savings Association passbook  
18 and certificate of deposit in question were falsely made,  
19 forged, altered or counterfeited by someone, not necessarily  
20 the defendants or members of the conspiracy.

21 Seventh, that the defendant you are considering knew  
22 the passbook and certificate of deposit were falsely made,  
23 forged, altered or counterfeited.

24 Eighth, that the defendant you are considering  
25 wilfully did the act or acts charged.

1 74kgs

615

2 An act is done knowingly if it is done voluntarily  
3 and purposefully and not because of mistake, inadvertence  
4 or other innocent reason.

5 An act is wilfull if it is done knowingly, deliber-  
6 ately and with an evil motive or purpose. An act is not done  
7 wilfully if it is done as a result of mistake, carelessness,  
8 lack of an evil motive or purpose or for some other innocent  
9 reason.

10 It is not necessary for the Government to prove that  
11 a particular defendant actually knew that Leonard Turi was  
12 transporting the American Savings Association passbook and  
13 certificate of deposit on April 2, 1973, or that a particular  
14 defendant participated in the forgery or counterfeiting of the  
15 passbook or certificate of deposit, or that he knew the identity  
16 of the person who committed the forgery or counterfeiting.

17 Defendant Stern and Yagid contend that even if you  
18 find that a conspiracy existed, and that they were members of  
19 it, Yagid withdrew formally from the conspiracy on March 31,  
20 1973 and Stern withdrew on or about April 1, 1973. A conspira-  
21 tor has the right to discontinue his participation in carrying  
22 out a conspiracy. However, in order to withdraw from a  
23 conspiracy, a defendant must take some affirmative action to  
24 disavow the purpose of the conspiracy, as for example, by  
25 making a clean breast to appropriate authorities, or by



1 75kgs 616  
2 advising his co-conspirators that he is abandoning the project.  
3 Mere cessation of activity is not enough. And the burden of  
4 establishing a withdrawal is on the defendant who asserts it.

5 Defendants Yagid and Stern contend that they with-  
6 drew from the conspiracy to transport forged passbooks in  
7 interstate commerce prior to the transportation of the American  
8 Savings Association passbook and certificate of deposit by  
9 Leonard Turi on April 2, 1973. Whether or not the conversations  
10 which Mr. Yagid reportedly had with Mr. Olsberg on March 31,  
11 1973 and April 1, 1973 constituted an effective withdrawal  
12 as to Stern or Yagid is for you to decide.

13 If you find that the defendants did not withdraw  
14 from the conspiracy, or that an attempted withdrawal was not  
15 effective in that their prior acts helped set in motion an  
16 illegal scheme which necessarily resulted in Turi's interstate  
17 transportation of a forged passbook, then you may proceed to  
18 determine whether or not they are guilty of the substantive  
19 crime charged in Count 2 in accordance with the instructions  
20 I have already given you. If you find that the defendants  
21 did effectively withdraw on or about March 31 and April 1,  
22 1973, then they were not members of the conspiracy on April  
23 2, 1973 when it is submitted that Leonard Turi transported a  
24 forged passbook, and you must therefore acquit them of the  
25 charge in Count 2.

1 76kgs

617

2 Withdrawal from the conspiracy should not be  
3 considered by you as a defense to Count 1, that is, the  
4 conspiracy count, if you find that the defendant whose conduct  
5 you are considering, Yagid or Stern, committed at least one  
6 overt act in furtherance of an illegal plan prior to his  
7 alleged withdrawal. Indeed, the Government has offered proof  
8 to show that Messrs. Yagid and Stern committed several acts  
9 prior to their alleged withdrawal, which acts the Government  
10 contends were in furtherance of an illegal plan to transport  
11 forged passbooks in interstate commerce, and Defendant Yagid  
12 has admitted the commission of some such overt acts by him  
13 and Defendant Stern. As to those acts, you will recall  
14 defendants assert the defense of entrapment. Of course, if  
15 you find that the defendants committed no overt acts prior  
16 to their alleged withdrawal, and that they did in fact  
17 affirmatively and effectively withdraw, you must acquit.

18 Defendants Stern and Yagid assert as a defense that  
19 they were victims of entrapment by an agent of the Government.

20 The word "entrapment" that I just used is a legal  
21 term. It has a technical meaning, not that of popular speech  
22 or colloquial, ordinary usage. Therefore I must explain the  
23 word and meaning of "entrapment" as it is used in the law.

24 The function of law enforcement is not only the  
25 prevention of crime but also the detection and apprehension of



1 77kgs

618

2 criminals. Manifestly, that function does not include the  
3 manufacturing of crime. The defense of entrapment is based  
4 upon the policy of the law not to ensnare or entrap innocent  
5 persons into the commission of a crime. But a line must be  
6 drawn between the entrapment of the unwary innocent and the  
7 trap for the unwary criminal.

8 A basic feature of entrapment is that the idea or  
9 design of committing the crimes originated with a law enforce-  
10 ment officer rather than with a defendant; that the defendant  
11 had no previous disposition, intent or purpose to commit the  
12 alleged offenses, and that the law enforcement officer or  
13 Government employee implanted in the mind of an innocent  
14 person the disposition to commit the alleged offense and  
15 instigated and incited its commission in order that the defen-  
16 dant might be arrested and prosecuted.

17 If you find that an agent or employee of the Govern-  
18 ment merely afforded a favorable opportunity or facilities  
19 to the defendant for the commission of the alleged crime, such  
20 conduct on the part of the Government does not constitute  
21 entrapment. Entrapment would occur only if you find that the  
22 Government agents induced the defendant to commit the crime  
23 charged in the indictment and that the criminal conduct of  
24 the defendant was the product of the Government's activity.

25 If you find any credible evidence creating the

1 78kgs

2 reasonable possibility that a Government agent or employee  
3 instigated and incited or otherwise induced the defendants  
4 to commit the crime charged, then the Government must prove  
5 beyond a reasonable doubt that such inducement was not the  
6 cause or creator of the crime, that is, that the defendant  
7 had been predisposed and willing to commit the crime.

8 If the prosecution has satisfied you beyond a  
9 reasonable doubt that the defendant was ready and willing to  
10 commit the offense charged, but was awaiting a favorable  
11 opportunity to commit the offense, then you may find that the  
12 inducement, if any, which brought about the actual offense,  
13 was no more than the providing of what appeared to the defen-  
14 dant to be a favorable or timely or convenient opening or  
15 facility for the criminal activity in which the defendant may  
16 have preferred to engage, and, in such circumstances, you  
17 may find that the Government agent has not seduced an innocent  
18 person or persons, but has only provided the means for the  
19 defendant to effectuate or realize his own then existing  
20 purpose.

21 I have now completed my charge about the specific  
22 crimes alleged in the indictment. I now address myself to more  
23 general considerations which you must bear in mind during your  
24 deliberations.

25 First, I must emphasize again that there are three



1 79kgs

620

2 defendants on trial here and as to each count, you must  
3 consider separately whether the specific defendant charged  
4 in that count has been proved guilty beyond a reasonable doubt.

5 It is your duty to give separate personal considera-  
6 tion to the case of each defendant. When you do so, you should  
7 analyze what the evidence in that case shows with respect to  
8 that individual, leaving out of consideration entirely any  
9 evidence admitted solely with regard to other defendants.  
10 Each defendant is entitled to have his case determined from  
11 evidence as to his own acts and statements and conduct, and  
12 any other evidence in the case which may be applicable to him.  
13 The fact that you may find one or more of the accused guilty  
14 or not guilty on any particular count should not influence  
15 your verdict with respect to the other defendants or with  
16 respect to any other count.

17 As I told you before, the Government has the burden  
18 of proving the charges against each defendant beyond a reason-  
19 able doubt. A defendant does not have to prove his innocence.  
20 A defendant has the right to remain silent. He does not have  
21 to testify, or present any evidence in his behalf and you may  
22 not draw any inference or conclusion or form any prejudice  
23 because a defendant did not testify or present evidence.

24 On the other hand, the law permits a defendant to  
25 testify in his own behalf if he wishes to do so. Mr. Yagid

1 80kgs

621

2 elected to testify. The testimony of a defendant must be  
3 considered by you as would the testimony of any other witness.  
4 You must determine the credibility of a defendant who testifies  
5 and in so doing, you must consider the deep personal interest  
6 which every defendant has in the outcome of his case. Indeed,  
7 it is fair to say that any defendant has the greatest stake  
8 in the outcome. The defendant's interest in the result of  
9 his trial is of a character possessed by no other witness.  
10 That interest requires that you receive such testimony with  
11 caution and in appraising its credibility, you may take the  
12 defendant's supreme interest into consideration.

13           However, it by no means follows that simply because  
14 a person has a vital interest in the end result, he is not  
15 capable of telling a truthful, candid and straightforward  
16 story. It is for you to decide to what extent, if at all, his  
17 interest has affected or colored his testimony.

18           Now, under your oath as jurors, you can't allow  
19 consideration of the punishment which may be inflicted upon  
20 a defendant, if he is convicted, to influence your verdict in  
21 any way or in any sense to enter into your deliberations.

22           The duty of imposing sentence rests exclusively on  
23 the Court. Your function is to weigh the evidence in the case  
24 and to determine the guilt or innocence of a defendant solely  
25 upon the basis of such evidence and the law.



1 81kgs

2 You are to decide the case upon the evidence, and  
3 the evidence alone, and you must not be influenced by any  
4 assumption, conjecture or sympathy, or any inference not  
5 warranted by the facts.

6 If you fail to find beyond a reasonable doubt that  
7 the law has been violated, you should not hesitate for any  
8 reason to find a verdict of acquittal. But, on the other hand,  
9 if you find that the law has been violated as charged, you  
10 should not hesitate because of sympathy or any other reason  
11 to render a verdict of guilty.

12 I would like to point out that you should not enter  
13 the jury room with any preconceived pride of opinion. You  
14 should not be unwilling to be convinced by intelligent argu-  
15 ments with your fellow jurors. Each juror has to answer to  
16 his or her own conscience and each has to decide this case for  
17 himself or herself, but in so doing, you should be willing to  
18 consider the views of the other jurors and to talk things out  
19 and try your best to reach a unanimous agreement.

20 Your verdict must be one with which each juror  
21 agrees.

22 If during your deliberations you deem it necessary  
23 to have a copy of the indictment, or desire any of the  
24 exhibits, they will be sent in to you on request. If you  
25 find it necessary again to hear any of the tapes, they will

1 82kgs

623

2 be played. If you wish any portion of the testimony read or  
3 the Court's charge reread, that will be done.

4 In conclusion, let me say, every criminal case is  
5 important. It is important to the Government and it is  
6 important to the defendant. It is your obligation to decide  
7 the case on the evidence and on the law as I have charged it  
8 to you.

9 I give the case to you with the assurance that you  
10 will do just that.

11 Will counsel meet me in the robing room.